

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

Thursday, January 2, 2020

Hearing Room 5B

10:00 AM

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 09-05-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-09-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Party Information

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

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 7, 2020

Hearing Room 5B

10:30 AM

8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA INC. dba CHRYSLER CAPITAL
Vs.
DEBTOR

Docket 80

Tentative Ruling:

Tentative for 1/7/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Barley Forge Brewing Company,

Represented By
M Douglas Flahaut
Christopher K.S. Wong

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Randall P Mroczynski

**United States Bankruptcy Court
Central District of California
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5B

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8:19-14228 Francis Lagat and Precybel Lagat

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICREDIT FINANCIAL SERVICES, INC
Vs.
DEBTORS

Docket 9

Tentative Ruling:

Tentative for 1/7/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Francis Lagat

Represented By
Scott D McDonald

Joint Debtor(s):

Precybel Lagat

Represented By
Scott D McDonald

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, January 7, 2020

Hearing Room 5B

10:30 AM

8:19-14393 Francis J. Dopp

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BMW BANK OF NORTH AMERICA
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 1/7/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Francis J. Dopp

Represented By
Mark D Klein

Movant(s):

BMW Bank of North America

Represented By
Cheryl A Skigin

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, January 7, 2020

Hearing Room 5B

10:30 AM

8:19-14502 Andy T. Torres

Chapter 13

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BMW BANK OF NORTH AMERICA
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Tentative for 1/7/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Movant(s):

BMW Bank of North America

Represented By
Cheryl A Skigin

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, January 7, 2020

Hearing Room 5B

10:30 AM

8:17-11435 Kimberlee Ann Fotiades

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 12-17-19)**

STATE FARM BANK, F.S.B.
Vs.
DEBTOR

Docket 43

Tentative Ruling:

Tentative for 1/7/20:
Same.

Tentative for 12/17/19:
Grant. Appearance is optional.

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning
Barry E Borowitz

Movant(s):

State Farm Bank, FSB

Represented By
Erin M McCartney

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, January 7, 2020

Hearing Room 5B

10:30 AM

8:19-10091 Mark Thompson and Linda C. Thompson

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 12-3-19)**

JPMORGAN CHASE BANK
Vs.
DEBTOR

Docket 54

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 1-6-20**

Tentative Ruling:

Tentative for 1/7/20:
Same.

Tentative for 12/3/19:
Grant. Appearance is optional.

Party Information

Debtor(s):

Mark Thompson

Represented By
Julie J Villalobos

Joint Debtor(s):

Linda C. Thompson

Represented By
Julie J Villalobos

Movant(s):

JPMORGAN CHASE BANK,

Represented By
Nancy L Lee

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CONT... Mark Thompson and Linda C. Thompson

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 5B

10:30 AM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON TRUST, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 42

Tentative Ruling:

Tentative for 1/7/20:
Grant unless current or APO.

Party Information

Debtor(s):

Wendie Lorraine Brigham

Represented By
Christopher J Langley

Movant(s):

Wilmington Trust, National

Represented By
Joseph C Delmotte

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, January 7, 2020

Hearing Room 5B

11:00 AM

8:19-12977 Dianne Dobson-Sojka

Chapter 7

#8.00 Motion To Reopen Chapter 7 Case For Violation Of The Discharge (28 USC Section 1930)

Docket 23

Tentative Ruling:

Tentative for 1/7/20:

This is the Debtor's motion to reopen her Chapter 7 case pursuant to 11 U.S.C. §350(b). Debtor alleges that two creditors, Storage Center of Valencia (Valencia) and The Santa Paula Storage Place (Santa Paula), violated the automatic stay by selling or attempting to sell her storage units and/or items contained in storage units in or around September of 2019. As of this writing, only one of these creditors, Santa Paula, has filed an opposition.

Debtor asserts that Valencia has been attempting to collect on storage bills that were covered by the Debtor's discharge obtained in November of 2019. Debtor also asserts that Santa Paula sold items of Debtor's cherished personal property contained within a storage unit while the automatic stay was in effect (in or around September of 2019).

Reopening a chapter 7 case is governed by 11 U.S.C. §350(b), which provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." But there are some problems with this motion as currently drafted. First, the motion itself is extremely thin, containing only a short, handwritten recounting of alleged events. Second, the motion is devoid of any evidentiary support. This is important because Santa Paula's main opposition to the motion is premised on the argument that Santa Paula never rented a storage unit to Debtor, and, therefore, never held anything that could be considered property of the estate or of the debtor. Santa Paula does note that it rented storage space to a Gloria Lewis (Lewis), a person with whom Debtor may have a

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Chapter 7

relationship. However, the rental agreement between Santa Paula and Lewis makes explicit that Lewis was to use the rented storage unit to store only her personal property, not the property of any other person. The rental agreement also expressly prohibited assigning or subletting the storage unit to another. Santa Paula notes that Lewis became delinquent on her rental payments and eventually, after failed attempts to contact Lewis to arrange payments, Santa Paula auctioned off the contents of the storage unit on September 30, 2019. The court does not pre-judge whether there was or was not some property of the estate within the auctioned items protected by the stay as the recounted events all happened after the petition was filed July 31, 2019.

Santa Paula argues that, even if Debtor were able to show that some of the items auctioned actually belonged to her, Santa Paula had a perfected, pre-petition statutory lien on the contents of the storage unit pursuant to California Business and Professions Code §21700-21716. In short, Santa Paula argues that the case should not be reopened as to it because there is no "cause" to reopen a case where the result would be futile. See *In re Killmer*, 501 B.R. 208, 211 (Bankr. SD NY 2013); *In re Pennington-Thurman*, 499 B.R. 329, 332 (8th Cir. BAP 2013) (granting motion to reopen based on lender's violation of discharge injunction would be futile where lender was not attempting to hold debtor personally liable for discharged debt); see also *Redmond v. Fifth Third Bank*, 624 F.3d 793, 799 (7th Cir. 2010) (closed bankruptcy proceeding should not be reopened where doing so would be futile and a waste of judicial resources). Rather, Santa Paula believes this motion is being brought in bad faith in order to extract an unwarranted settlement from Santa Paula.

It is difficult to assess whether there exists cause to reopen this case without some evidentiary support in her motion. The situation is not helped by the fact that Debtor is proceeding *in pro se*. Debtor is encouraged to obtain counsel if she is serious about pursuing her claims against the two creditors, or at the very least, to resubmit this motion with any relevant documentation she may possess that substantiates the allegations made in this motion. Of

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interest would be any substantiation that it is *the Debtor* who is the customer of Valencia, for example, or, if Ms. Lewis is the customer of Santa Paula, as it alleges, how a stay would nevertheless have arisen regarding certain items within that storage unit and/or how Santa Paula should have known that. Also, the claim of statutory warehouseman's lien should also be addressed.

Valencia has not filed an opposition to this motion despite being (apparently) properly noticed and served. The reason for Valencia's failure to oppose is unknown. However, this failure does appear to give Debtor at least some ground to stand on, especially if she can come forward with evidentiary support for her claims against Valencia that would warrant reopening the case. Refinement of the motion as against Santa Paula as discussed above would also seem to be in order. Finally, as there is an alleged violation of the automatic stay, the U.S. Trustee's Office should probably be given notice of such a renewed motion as well.

Deny without prejudice to resubmission supported by evidence

Party Information

Debtor(s):

Dianne Dobson-Sojka

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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Hearing Room 5B

11:00 AM

8:13-11143 Troy John Rodarmel

Chapter 7

#9.00 Trustee's Final Report And Applications For Compensation:

JOHN M WOLFE, CHAPTER 7 TRUSTEE

ARENT FOX LLP, ATTORNEY FOR TRUSTEE

Docket 0

Tentative Ruling:

Tentative for 1/7/20:

There is no proof of service. Allow as prayed provided the service issue is resolved.

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
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Tuesday, January 7, 2020

Hearing Room 5B

11:00 AM

8:15-15801 Joon Han Kim and Soon Ok Kim

Chapter 7

#10.00 Application For Interim Compensation

NEILI PEDERSEN, SPECIAL COUNSEL

FEE:	\$842,000.00
EXPENSES	\$0.00

Docket 111

Tentative Ruling:

Tentative for 1/7/20:
Allowed as prayed and compromise of disputed portion is approved.
Appearance is optional.

Party Information

Debtor(s):

Joon Han Kim

Represented By
Arlene M Tokarz
Harlene Miller

Joint Debtor(s):

Soon Ok Kim

Represented By
Arlene M Tokarz
Harlene Miller

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke

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11:00 AM

8:15-15801 Joon Han Kim and Soon Ok Kim

Chapter 7

#11.00 Application For Compensation For Period: 3/24/2016 to 12/12/2019:

DONALD W SIEVEKE, TRUSTEE'S ATTORNEY

FEE:	\$23,855.00
EX[ENSES	\$470.45

Docket 112

Tentative Ruling:

Tentative for 1/7/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Joon Han Kim

Represented By
Arlene M Tokarz
Harlene Miller

Joint Debtor(s):

Soon Ok Kim

Represented By
Arlene M Tokarz
Harlene Miller

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke

**United States Bankruptcy Court
Central District of California
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Tuesday, January 7, 2020

Hearing Room 5B

11:00 AM

8:19-10194 Phu Nguyen

Chapter 7

#12.00 Trustee's Final Report And Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT

Docket 46

Tentative Ruling:

Tentative for 1/7/20:
Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Phu Nguyen

Represented By
Kenneth W Moffatt

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Tuesday, January 7, 2020

Hearing Room 5B

11:00 AM

8:19-12516 Ultimate Brands Inc

Chapter 7

#13.00 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)
(cont'd from 12-17-19)

Docket 247

Tentative Ruling:

Tentative for 1/7/20:

This is the Trustee's motion for approval of a sale, free and clear of liens, of certain intellectual property assets of the estate to the Unofficial Committee of Ultimate Brands Franchisees Cooperative Trust ("Buyer") under §363(f). The motion is supported by the Unofficial Committee of Franchisees, including the former potential purchaser, John-Michael Stern, and has received consent of the blanket lienholder, 660 BVD, LLC. The motion is again opposed by franchisees/creditors William and Monica Harter and Help the One, Inc. who are also apparently joined by Michael John Patterson and Wheatstrong Enterprises (collectively "Opponents"). The reader should also review the memorandum on calendar item #14 which discusses the settlement because many of the issues overlap.

Trustee seeks an order that provides that:

1. The Motion is granted;
2. The Trustee is authorized to sell the Purchased Assets listed in Schedule A to the APA attached to the Marshack Declaration as Exhibit "1" to the Buyer outside the ordinary course of business under 11 U.S.C. § 363(b);
3. The sale is free and clear of all liens, claims, and interests pursuant to 11 U.S.C. §363(f), after consideration of the objections (if any)

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raised to the sale by any duly-noticed creditors or parties-in-interest;

4. Notice to all creditors and parties in interest is adequate;

5. The Buyer is determined to be a good faith purchaser under 11 U.S.C. § 363(m);

6. The 14-day period of FRBP 6004(h) is waived;

Through this motion, Trustee intends to sell the following property of the Estate to Buyer:

- All 18|8 trademarks, service marks, and related commercial symbols
- The 18|8 Brand System including its distinctive format, methods, procedures, signs, designs, layouts, standards, and specifications
- Confidential Information relating to developing and operating 18|8 Salons including, without limitation:
 - o Training and operations materials and manuals;
 - o Methods, formats, specifications, standards, systems, procedures, sales and marketing techniques in developing and operating 18|8 Salons;
 - o Marketing and advertising materials;
 - o All computer software and other technology that is proprietary to the Company;
 - o Customer lists, POS databases, communication and retention programs, and data used or generated in connection with those programs; and
 - o Graphic designs and related intellectual property.

Under the Asset Purchase Agreement ("APA"), the Buyer was required

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to fund the \$155,000 cash component of the proposed sale prior to the hearing on December 17, 2019 (hearing now Jan. 7). The Buyer duly funded the \$155,000 cash component, which is being held in a segregated account by the Trustee. Paragraph 15 of the APA provides that the sole condition precedent to the effectiveness of the sale is "Bankruptcy Court approval of this Agreement and the Sale Motion... provided, however that, if the Court approves the Agreement without approving the compromise and settlement provided for in paragraphs 5-11, the Agreement shall take effect except with respect to those paragraphs."

1. Standards for Approving A Sale

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. *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 advantage of any potential purchasers. *Id.* at 842.

2. The Sale Should Be Approved

Trustee argues that if this sale is not consummated, he will have no choice but to issue a "no-asset report." This court has already remarked that this is a melting ice cube and has opined that in situations such as this, a sale, which garners at least something for creditors, is probably better than the alternative. Since the last hearing on December 17, 2019, a few of the noted deficiencies have apparently been remedied. The identity of the Buyer has become clear. The blanket lienholder, 660 BVD, LLC has given its conditional consent to the sale pursuant to a stipulation with Trustee (See Dkt. 295). The marketing efforts have also become clearer since the last

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hearing. As the court understands, Trustee had a couple of potentially interested buyers, including John-Michael Stern. However, as noted in detail in the motion and supporting declarations, the potential buyers all had specific circumstances and requirements that would have needed to be in place before any serious negotiations would begin in earnest. These requirements proved infeasible for a multitude of reasons, which caused the interested buyers and Trustee to mutually abandon a potential sale of all Debtor's assets. Instead, Buyer made an offer to purchase only certain intellectual property assets for the sum of \$155,000, outbidding Mr. Stern. It should be noted that Mr. Stern filed a declaration in support of the sale motion detailing why his initial soft bid of \$750,000 proved to be unworkable. (See Dkt. 294)

Buyer seeks a §363(m) good faith determination, based on the details of the bidding and negotiations process outlined in the Graff and Stern declarations (See Dkt. 293 and 294 respectively), which Buyer asserts demonstrates the absence of collusion between Buyer and Trustee or any unfair advantage. Furthermore, Buyer asserts that the negotiations to purchase Debtor's assets began in earnest back in October and were not yet finalized when the initial hearing on the motion occurred, but Trustee and Buyer did not want to rush the negotiations. Both Buyer and Trustee were represented by independent counsel during the negotiations. Therefore, Trustee and Buyer have likely done enough to demonstrate both their mutual good faith and that the sale was negotiated at arms' length.

Trustee and Buyer also assert that the purchase price of \$155,000 likely exceeds the fair market value of assets to be sold. In support of this assertion, Buyer points out that the Debtor's franchise model is fatally flawed and was the product of fraud from the outset. This is shown, according to Buyer, by the fact that even though Debtor charged unaffordable royalties while providing inadequate services to the franchisees, Debtor still could not sustain its franchise business. This fact alone, Buyer asserts, makes the IP nearly valueless to a non-franchisee third party. Therefore, the only parties that would have any interest in the assets would be those who are already invested in the franchise business. Therefore, it is not surprising that the only real interested came from Buyer and another Franchisee, Mr. Stern.

The Opponents believe that this motion should be denied due to fear that a sale may extinguish any potential claims or rights they may have,

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especially concerning a right to challenge the pre-petition assignment of UFI's Franchise Agreements to Debtor, which the Opponents believe was an avoidable fraudulent conveyance. The Opponents also take issue with the alleged low level of detail and evidentiary support provided by Trustee in the motion. Further, Opponents argue that the motion fails to demonstrate sufficient marketing efforts and/or evidence that proper measures were taken to market the assets. The objections are largely quite like those in the opposition to the compromise motion.

Trustee argues that, with respect to the Opponents' assertion that they have a viable fraudulent conveyance action, there is no Ninth Circuit case which holds that this is a sufficient interest in property to which an unliquidated, unsecured fraudulent conveyance action may attach and survive a bankruptcy sale or even implicate the provisions of §363(f). Trustee asserts that he is selling the equivalent of a quitclaim to the Buyer, and makes no representation, guarantee, or warranty as to the Debtor's right in the Purchased Assets. Trustee further argues that because he is essentially quitclaiming the Estate's interest in such assets to the Buyer, any opposition to the sale as to the Trustee compromising or selling third parties' rights is unwarranted and unmeritorious; the Trustee cannot and is not selling something that the Estate does not own.

Regarding the potential fraudulent transfer action, Trustee points out that under 11 U.S.C. §363(p)(2), any objecting creditor has the burden of proving the extent of their validity, priority, or extent of any claimed interest in the specific assets subject to the Trustee's proposed sale. Trustee also cites *In re Kellogg-Taxe*, 2014 Bankr. LEXIS 1033 at *22 (Bankr. C.D. Cal. 2014); accord, *SEC v. Capital Cove Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856 at *15-16 (C.D. Cal. 2015) for the proposition that where a free and clear sale is proposed under 11 U.S.C. § 363(f)(4), "[t]he parties must provide some factual grounds to show some objective basis for the dispute." Further, Trustee cites *In re QDOS, Inc.*, 591 B.R. 843, 848-50 (Bankr. C.D. Cal. 2018), (rev'd on procedural grounds by *Hayden v. QDOS, Inc. (In re QDOS, Inc.)*, 607 B.R. 338 (B.A.P. 9th Cir. 2019)) for the proposition that "'a partially disputed claim is a disputed claim' is not only true, it is necessarily true." Trustee notes that the only asserted interest by the Opponents is the possibility that they might be able to prevail in a later fraudulent conveyance action against UFI and the Debtor (to the Trustee's and the court's

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knowledge, no such action is underway), and they seek to preserve their rights in the Purchased Assets or the Royalty Component. This being the case, Trustee concludes that these unliquidated, unsecured, contingent hypothetical judgment creditors have no interest in the Purchased Assets or the Royalty Component which survives the proposed sale. Opponents analysis could only make any sense if viewed as an attachment, which is not before the court.

Given the specific circumstances of this case and the case law cited above, it is inappropriate to hold up a sale, which seems increasingly necessary, because a minority of creditors might want to bring an action at a later time. Also, nothing in the Opponents' claims amounts to an interest *in the assets* to be sold which could or should hold up a sale.

3. Waiver of the 14-day Stay

Trustee and the Buyer both request that the court waive the 14-day stay imposed by FRBP 6004(h) to give a sense of reassurance and finality to these proceedings. Trustee cites Collier On Bankruptcy ¶ 6004.11 (16th ed. 2019) for the proposition that "if an objection [to the sale] has been filed and is overruled, the court should eliminate or reduce the 14-day stay period only upon a showing that there is a sufficient business need to close the transaction within the 14-day period and the interests of the objecting party, taking into account the likelihood of success on appeal, are sufficiently protected."

As noted, 660 BVD, LLC's objection seems to have been mollified through stipulation, and so long as the conditions outlined in that stipulation are observed, there is little likelihood that 660 BVD would lodge an appeal were this motion to be granted. As noted above, Opponents may very well attempt to appeal this motion if it is granted despite the relative weakness of their opposition, which makes the likelihood of success on that appeal uncertain at best. However, balancing the likelihood of a successful appeal against the melting ice cube problem immediately before the court, granting a waiver of the 14-day stay is likely appropriate. In sum, the Trustee has no alternative to this sale and the filing of a "no asset report" benefits no one.

Grant

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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 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.

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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.

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

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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 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

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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, 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

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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 than ideal sale is not still better than nothing at that time.

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Party Information

Debtor(s):

Ultimate Brands Inc

Represented By

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Julie J Villalobos

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang

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#14.00 Motion To Approve Compromise With Unofficial Committee Of Ultimate Brands Franchisees Regarding Royalty Payments

Docket 277

Tentative Ruling:

Tentative for 1/7/20:

This is the Chapter 7 Trustee, Richard Marshack's ("Trustee's") motion to approve compromise agreement between the Estate and certain members of the unofficial committee of Ultimate Brands franchisees ("Settling Franchisees") pursuant to FRBP 9019. This memorandum addresses issues intimately related to the sale motion also on calendar (#13) and so should be read in conjunction with the memorandum on that motion. Trustee requests the following relief:

1. Approving the compromise set forth in paragraphs 5-11 of the Asset Purchase Agreement ("APA") attached as Exhibit 1 to the Marshack Declaration ("Agreement" or "Settlement Agreement");
2. Authorizing the Trustee to provide the releases specified in the Agreement;
3. Authorizing the Trustee to execute any other documents which may be necessary to consummate the Agreement.

The motion is opposed by creditors William Harter, Monica Harter, and Help the One, Inc. ("Creditors"). Creditors are joined by Michael John Patterson and Wheatstrong Enterprises. The essential terms of the compromise, as summarized by Trustee, are as follows:

"The Settling Franchisees waive any challenge that the prepetition assignment of their franchise agreements from Ultimate Franchises, Inc. ("UFI") was in any way invalid, and agree to settle and compromise their post-petition royalty obligations at a reduced rate of 3.5% in exchange for a waiver of any other defense or right to offset based on the Settling Franchisees' vigorous assertions of pre- and post-petition breaches of their franchise agreements by the Debtor. Under the terms of the proposed

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compromises, the Trustee expects to receive approximately \$95,000 in otherwise disputed royalty payments, where the Settling Franchisees' defenses to payment would be prohibitively costly and time-consuming to litigate, and where the likelihood of success in such litigation is greatly uncertain." (Trustee's Motion, p. 2)

The 9th Circuit has recognized in *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377 (9th Cir. 1986), cert denied, 479 U.S. 854 (1986), 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 were 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.

Each of the *A&C Properties* factors are met here for the reasons explained below:

1. Probability of Success

Trustee argues that if he attempted to collect any amount of post-petition royalties from the Settling Franchisees, the Settling Franchisees have advised that they would assert defenses to payment such as alleged pre-petition and post-petition defaults in the franchisor's obligations under the franchise agreements. Further, Trustee notes that a number of franchisees have previously sued the Debtor, UFI, and the individuals involved with the 18|8 business seeking rescission of their franchise agreements based on legal and equitable theories – essentially, that they were unlawfully induced to enter into franchise agreements and therefore the agreements should be cancelled. There are also issues related to a certain "Marketing Fee" in the franchise agreements that would likely be the subject of litigation. Trustee also notes that it is possible that the Settling Franchisees would assert defenses under the California Franchise Relations Act ("CFRA"), Cal. Bus. &

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Profs. Code §§ 20000 et seq., which provides in pertinent part that bankruptcy by "the business to which the franchise relates" is an express statutory justification for termination without an opportunity to cure. See Cal. Bus. & Prof. Code § 20021(a). For these and other reasons, Trustee believes that any litigation between the Estate and the Settling Franchisees would be heavily fact-intensive and likely protracted, making the success of litigation uncertain at best. By contrast, Trustee argues that by settling, the Estate will avoid the costs and other difficulties likely to abound in the event of litigation.

Creditors argue that Trustee has not satisfactorily demonstrated that this prong weighs in favor of approving the Settlement Agreement. For example, Creditors point out that Trustee's assessment of the outcome of potential litigation is inadequately supported by evidence beyond his own declaration, making his prognosis speculative at best. Creditors also point out that the Settlement Agreement would still not resolve the issue of whether the "purported assignment" was valid.

Trustee, in reply, argues that Creditor's assertions make Trustee's arguments stronger. Trustee points out that by arguing that Trustee did not have a legal right to enter into the Agreement with the Settling Franchisees, Creditors are casting doubt on Trustee's ability to collect on the royalties owed under the franchise agreements, which makes success in the litigation that much less likely. In response to Creditors' concerns over insufficient detail provided in Trustee's assessment, Trustee persuasively cites *Burton v. Ulrich (In re Schmitt)*, 215 B.R. 417, 425 (B.A.P. 9th Cir. 1997) where the *Burton* court stated:

A compromise should not be approved where key facts relevant to a cause of action are not revealed. An approval of a compromise, absent a sufficient factual foundation, inherently constitutes an abuse of discretion. On the other hand, in determining whether to propose a compromise, a trustee need not burden the estate with costs and expenses arising out of all manner of questions that may be presented for litigation. (Internal citations and quotation marks omitted)

Trustee argues, citing the above language, that he is not required to provide exhaustive detail or to mock up hypothetical arguments and litigate against himself in

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the context of a proposed settlement and compromise. This does appear to be what Creditors are arguing Trustee must do, but they do not provide any support for that argument. This factor weighs in favor of approving the compromise because Creditors have not raised sufficient factual or authoritative arguments that warrant overriding the Trustee's judgment.

2. Difficulties in Collection

Trustee argues that, in the event of successful litigation, collection efforts might well be hampered by the Settling Franchisees simply choosing to shutter their doors and cease operating, which would likely mean that the Estate would ultimately collect little or nothing on any judgments obtained. In fact, Trustee asserts that several Settling Franchisees are insolvent and nearly on the brink of filing their own bankruptcy petitions. This fact also calls into question the ability of the Estate to collect on any judgment obtained through litigation. Trustee also argues that since each Settling Franchisee owes at most approximately \$20,000 to the Estate, the costs of collections are likely therefore to exceed the collectible amount, or at least nearly so. Creditors' again argue that Trustee's motion is inadequately supported by evidence. For example, Creditors argue that Trustee is simply asserting, without substantiation, that several of the Settling Franchisees are insolvent, or nearly so, without providing any admissible proof of those assertions. However, Trustee's assertions are supported by the Unofficial Committee of Franchisees and specifically by the Declaration of Austin Graff, a member of that committee. It is unrealistic to expect a forensic analysis of collectability before any compromise of litigation, particularly, as here, where the Estate has so few resources to work with. The court is satisfied that the Trustee has properly weighed this issue, which supports the compromise.

3. Complexity and Expense of Litigation

Trustee argues that the litigation, as noted above, could potentially be quite complex as it is likely to be highly fact intensive, requiring intense scrutiny of the franchise agreements. Also, as noted above, there is an open question of law as to whether the California Franchise Investment Law ("CFIL") applies to the operation of a franchise as opposed to a sale of a franchise to a franchisee by a franchisor. Trustee further points out that the objecting parties in this case have argued that the

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Trustee could not operate the Debtor's business or operate as a franchisor under California's franchise statutes. Trustee notes that neither the Debtor nor the Trustee were registered with the California Department of Business Oversight to operate as a franchisor of 18|8 franchises, and the lack of registration poses another complex legal question as to whether the Debtor's operation was even subject to CFIL. All these questions regarding CFIL arise, Trustee asserts, because there was a contested prepetition assignment of all of the rights of UFI (which is a registered franchisor) to the Debtor (which is not), another issue which the Trustee would have to litigate as the fiduciary for the Debtor and not for UFI. Lastly, Trustee points out that the litigation is further complicated by the fact that the Settling Franchisees are in no fewer than 15 states, and, therefore, litigation may implicate diverse and possibly conflicting matters of state law governing the sale and operation of a franchise.

Creditors argue that the sale, which is the subject of the Settlement Agreement, may actually be illegal. Creditors argue that the Trustee does not have the legal right to enter into the Settlement Agreement with respect to the Franchise Agreements because the Franchise Agreements, and the claims and rights related thereto, are not assets of the Estate, and are therefore not subject to the Trustee's administration of the Estate. In response to Trustee's assertion that the multitude of state laws makes litigation more uncertain and complex, Creditors argue that this consideration also weighs against approving the Settlement Agreement. This is because, Creditors argue, the subject matter of the Agreement may not comply with the laws of one of more of those states.

But in reply, Trustee persuasively argues that the legal questions raised by Creditors actually make the case for approving the Settlement Agreement that much stronger because it demonstrates how hotly contested the litigation would likely be. It is not clear why Creditors opine that the sale is illegal and that the Franchise Agreements are not property of the Estate. If this is so, then the Trustee will likely have nothing to collect upon, which would mean litigation is nearly certain to end in failure from the Trustee's and Estate's point of view, making the "better than nothing" argument. If the probability of success in litigation is low or nil, does that not favor approving the Settlement Agreement to improve the chances that the Estate's creditors get something?

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As Trustee argues, this settlement would avoid complex and potentially costly litigation, the outcome of which, even if Trustee were successful, would likely not benefit creditors of the Estate for the reasons discussed above. By contrast, the Settlement would guarantee at least some recovery for creditors of the Estate. Trustee believes that this is the best and probably the only good outcome for all parties involved.

Creditors strenuously disagree. Creditors believe the Trustee is leaving far too much money on the table by accepting only \$95,000 when, Creditors argue, that the exhibits to the Settlement Agreement appear to evidence approximately \$770,000 in outstanding pre and post-petition royalties owed by the Settling Franchisees. But this argument is misleading. Just because a gross recovery in a perfect world seems comparatively large, this does not relieve the necessity for analyzing the costs and probability of getting there.

In any case, the court is obliged to consider the best interests of all creditors, not simply those of a minority of dissenting creditors. If this settlement is as problematic as Creditors make it out to be, and if it really is not in the best interest of creditors of the Estate, the court wonders why more creditors have not joined the opposition to this motion. The court is mindful that, assuming Creditors' estimation of the royalties owed is accurate, it does appear that Trustee is leaving a good deal of money on the table. However, the court is not convinced that, were the Trustee to seek remedy via litigation, *any* of that money would ever make its way back to the creditors of the Estate. Rather, like fairy gold, the court is convinced by the arguments made by both sides that litigation costs would be substantial and might even eclipse the value of the royalties. Further, pursuing litigation would impose lengthy delays on creditors' ability to be paid. That is assuming a positive outcome, over which, as noted, both Trustee and Creditors seem to harbor serious doubts.

The court generally defers to the judgment of the Trustee when it comes to matters regarding benefit to the estate. *In re Roger*, 393 F.Supp.3d 940, 960 (C.D. Cal. 2019). Moreover, as a practical matter, the Estate lacks the resources to wage such a litigation campaign in any event. Therefore, the court must evaluate not only the potential upside of a complete recovery, but also how the potentially huge costs

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of getting to such a recovery will be paid. No lawyer has come forward suggesting that he or she is willing to invest such a potentially large amount in such a contingency exercise that might last years.

5. Other Arguments

Creditors' lengthy opposition spends surprisingly little time opposing the Trustee's analysis of the *A&C Properties* factors, instead electing to attack the Settlement Agreement mainly on grounds that too much money is left on the table and asserting that Trustee does not have the legal right to bargain away certain rights and claims. Creditors obviously perused the Agreement and have pointed to several purported evidentiary and legal deficiencies. Creditors are also greatly concerned that if the Agreement is approved, it would possibly have the effect of extinguishing their claims and rights related to the Franchise Agreements, and could also cap the value of their claims and rights related to the Franchise Agreements at the amount of the Settlement Agreement.

But Creditors' opposition is long on rhetoric but critically short on authority. Creditors want to substitute their own business judgment for that of the Trustee's, and not necessarily in the interest of the rank and file of creditors. Creditors offer no evidence that there is any current hope of reaching a more favorable settlement or obtaining more net favorable judgments through litigation. Trustee even credibly calls into question Creditors' standing to bring this opposition mainly on grounds that their purported injury is more speculative than concrete. However, giving Creditors the benefit of the doubt as to their standing, Creditors' arguments suffer from the very lack of evidence and authority upon which they base major portions of their opposition. In some cases, evidence that directly undercuts their position exists in the record. For example, Creditors again mention a past potential sale to John-Michael Stern, arguing that there was, at one time, a possibility of selling Debtor's assets for \$750,000. However, as Mr. Stern himself, in his declaration in support of Trustee's sale motion, makes clear, the offer to purchase Debtor's assets was never formalized due to multiple factors including Mr. Stern's loss of confidence that Debtor's assets were worth anywhere near \$750,000. (See dkt. #294, p. 2-4). To the extent Creditors are relying on the deal that never was with Mr. Stern, that reliance appears to be badly misplaced. To be fair, this declaration was filed a few days after Creditors filed their opposition. Although not clear, Creditors might be arguing based

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on authorities such as *Moore v. Bay* that any right they might have to fraudulent conveyance litigation against parties involved in the assignment from UFI is being compromised. But the court has previously indicated, and the Trustee reiterates, that no such compromise of third-party rights is intended here.

In sum, the Trustee sits atop a "melting ice cube" and has sufficiently shown that the Settlement Agreement is the best likely result for the Estate available under these circumstances.

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

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#15.00 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 12-03-19 per order approving stip. ent. 12-02-19)

Docket 0

Tentative Ruling:

Tentative for 1/7/20:
Same.

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)

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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 paid." *Id.* at 3.

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

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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 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;

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- ii) Trademark Assignment and Notice of 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;
- 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.

Party Information

Debtor(s):

Ultimate Brands Inc

Represented By
Julie J Villalobos

Trustee(s):

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, January 7, 2020

Hearing Room 5B

11:00 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, January 7, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#16.00 Second Omnibus Objection to Secured Gift Card/Store Credit Claims:

Claim No. 98	Naheed Akhtar
Claim No. 119	Tammy Curtiss
Claim No. 424	Krina Bell
Claim No. 425	Rita Anne Bertolino
Claim No. 463	Mattha Vandermark
Claim No. 596	Maria Navas
Claim No. 623	Mary Bulone
Claim No. 657	Marian G. Walker
Claim No. 859	Melinda S. Scott
Claim No. 933	Patricia Washington
Claim No. 1056	Lillian J. Hernandez
Claim No. 1285	Lydia Peralta
Claim No. 1301	Carmen Herrada
Claim No. 1302	Betty Lu
Claim No. 1327	Mark A. Spangrud
Claim No. 1340	Patricia Wright

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CONT...

Anna's Linens, Inc.

Claim No. 1346

Julio Cesar Ham Bueno

Chapter 7

Claim No. 1379

Sherry McKinney

Claim No. 1410

Mary Robinson

Claim No. 1418

Nancy Ramos

Docket 2621

Tentative Ruling:

Tentative for 1/7/20:
Sustain. 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
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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
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Wednesday, January 8, 2020

Hearing Room 5B

10:00 AM

8:19-11458 2045 E Highland, 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)
(cont'd from 11-13-19)**

Docket 54

Tentative Ruling:

Tentative for 1/8/20:
No tentative. See #2.

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.

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

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
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Wednesday, January 8, 2020

Hearing Room 5B

10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#2.00 Debtor's Disclosure Statement Describing Chapter 11 Plan Of Reorganization

Docket 64

Tentative Ruling:

Tentative for 1/8/20:

This is debtor's motion for approval of disclosure statement as required under §1125(a)(1) as containing "adequate information." An adequacy finding is opposed in oppositions filed by both the UST and Seacoast Commerce Bank. The oppositions are both well taken, and the points raised need not be restated at elaborate length here. The court is primarily concerned about the following fundamental deficiencies:

1. The plan clearly violates the absolute priority rule found at §1129(b)(2) (B)(ii). The plan proposes only 1% to unsecured creditors in installments yet the principals retain governance and stock ownership. Seacoast, which itself may be the largest unsecured creditor, plans to vote against. No new value is mentioned. So, unless something else is true this plan is patently unconfirmable, and distribution of a disclosure statement on such a plan is a waste of time and resources. While the court does not usually prejudge confirmation issues, this one is too fundamental to ignore, and so either amendment or at least explanation is required;
2. The proposed treatment of Seacoast's secured claim is also very problematic. Debtor proposes either to cramdown a payment over 30 years at 5% or a "consensual sale" of the underlying real estate collateral. But the timing and conditions of the proposed sale are unstated, not made subject to conditions and are, thus, illusory. Can the debtor sell whenever it feels like it? Whenever in future it thinks the market has appreciated enough, even if that takes years, or never? The alternative treatment is also a non-starter. An effective

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CONT...

2045 E Highland, LLC

Chapter 11

100% loan to value claim is far riskier than a more conventional loan usually made as a percentage of value. Consequently, the increased risk element must be accommodated (paid for), and anything less is a legally impermissible imposition of the risk upon the lender. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Although this is usually a confirmation issue, 5% is far too low for a commercial loan under any reasonable economic analysis, i.e. prime rate is 4.75% and must be "built up" from there even under a *Till* analysis. *North Valley Mall* is not the only analysis relied upon by courts, but this court happens to believe it is the most appropriate in a business, real estate context. Therefore, the court will not approve dissemination of disclosure upon such a patently unconfirmable plan.

3. Feasibility is very questionable. Again, normally this is judged at confirmation, but the court does not ignore that the MORS show a generally declining cash position, and this is while there has been a 9-month moratorium in debt payments. Had even reduced payments been made the debtor would be by now out of money. What, if anything, is expected to change this outlook?

Deny

Party Information

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, January 8, 2020

Hearing Room 5B

10:00 AM

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

Chapter 11

#3.00 U.S. Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7
Pursuant to 11 U.S.C. Section 1112(b) Declaration Of Michele Saffari

Docket 46

Tentative Ruling:

Tentative for 1/8/20:
Grant.

Party Information

Debtor(s):

Dale Knox M.D. Inc.

Represented By
Andrew S Bisom

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Central District of California
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Judge Theodor Albert, Presiding
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Wednesday, January 8, 2020

Hearing Room 5B

10:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 7

#4.00 Order To Show Cause Why Joint Administration Should Not Be Severed And/Or Corporate Case Also Converted

Docket 187

Tentative Ruling:

Tentative for 1/8/20:
See #3 on calendar. Both cases will be dismissed.

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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Wednesday, January 8, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

**#5.00 Status Conference Re: Chapter 11 Voluntary Petition Individual
(cont'd from 9-11-19)**

Docket 1

Tentative Ruling:

Tentative for 1/8/20:
Continue to January 22, 2020 to coincide with dismissal/conversion motion.

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
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, January 8, 2020

Hearing Room 5B

10:00 AM

8:19-12375 South Coast Behavioral Health, Inc.

Chapter 11

#6.00 Motion by Debtor For Order Authorizing Assumption Of Real Property Leases

Docket 360

Tentative Ruling:

Tentative for 1/8/20:
Grant.

Party Information

Debtor(s):

South Coast Behavioral Health, Inc.

Represented By
Michael N Nicastro
Sean A OKeefe

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, January 8, 2020

Hearing Room 5B

10:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

#7.00 Motion Global Experience Specialists' Motion to Compel Responses to Requests for Production of Documents and Request for Sanctions

Docket 172

***** VACATED *** REASON: OFF CALENDAR - THE CASE HAS BEEN TRANSFERRED TO NORTHERN DISTRICT OF CALIFORNIA**

Tentative Ruling:

- NONE LISTED -

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
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Wednesday, January 8, 2020

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10:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

#8.00 Motion To Extend Exclusivity Period For Filing a Chapter 11 Plan and Disclosure Statement Motion to Extend Exclusivity Pursuant to 11 U.S.C. § 1121(d)

Docket 179

***** VACATED *** REASON: OFF CALENDAR - THIS HAS BEEN
TRANSFERRED TO NORTHERN DISTRICT OF CALIFORNIA**

Tentative Ruling:

- NONE LISTED -

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
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Thursday, January 9, 2020

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 12-19-19 per order approving stip. to cont. s/c entered 12-18-19)

Docket 1

Tentative Ruling:

Tentative for 1/9/20:
See #3

Tentative for 12/19/19:
See #2.1

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.

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CONT... Catherine M Haretakis

Chapter 11

Party Information

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

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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 12-19-19 per order approving stip. to cont. s/c entered 12-18-19)**

Docket 1

Tentative Ruling:

Tentative for 1/9/20:
See #3

Tentative for 11/21/19:
See #2.1

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

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CONT... Catherine M Haretakis

Donald W Sieveke

Chapter 11

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10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 7

#3.00 Chapter 7 Trustee's Motion For Order Approving Settlement Agreement Pursuant To Federal Rule of Bankruptcy Procedure 9019 (cont'd from 12-19-19)

Docket 302

Tentative Ruling:

Tentative for 1/9/20:
Same.

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

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CONT... Catherine M Haretakis Chapter 7

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 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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relating to the Riverside Property.

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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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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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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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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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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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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

**United States Bankruptcy Court
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10:00 AM

CONT... Catherine M Haretakis

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

Party Information

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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Thursday, January 9, 2020

Hearing Room 5B

10:00 AM

8:17-12406 Elmer Clarke

Chapter 7

Adv#: 8:17-01245 Little v. Clarke

#4.00 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)]
(cont'd from 01-02-20 per court's own motion)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-12-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 1-7-20**

Tentative Ruling:

Tentative for 9/5/19:
Why no status report? Status of state court matter?

Tentative for 4/11/19:
Why no status report? Status of state court matter?

Tentative for 10/11/18:
Does plaintiff agree that a further delay pending appeal is the best course?

Tentative for 3/8/18:
Why no status report?

Party Information

Debtor(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

**United States Bankruptcy Court
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Thursday, January 9, 2020

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10:00 AM

CONT... Elmer Clarke

Chapter 7

Defendant(s):

Elmer Clarke

Pro Se

Plaintiff(s):

Katie L. Little

Represented By
R Grace Rodriguez

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

United States Bankruptcy Court
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Thursday, January 9, 2020

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.

**#5.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 10-3-19 per order appr. fourth stip to cont. ent. 9-27-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-14-20 AT 10:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION TO: (1) EXTEND THE
DEADLINE FOR DEFENDANT TO RESPOND TO COMPLAINT AND (2)
CONTINUE THE JANUARY9, 2020 STATUS CONFERENCE ENTERED
12-04-19**

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

**United States Bankruptcy Court
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Santa Ana
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Thursday, January 9, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

#6.00 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

Tentative Ruling:

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01200 Samec et al v. Griffithe

#7.00 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

Tentative Ruling:

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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
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10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01202 Wick v. Guy Griffithe

#8.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt [11 usc Section 523 (a)(2)(A) And (a)(4) Case RIC 1821749 Wick vs. Griffthe Et.Al.

Docket 1

Tentative Ruling:

Tentative for 1/9/20:

Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Pro Se

Plaintiff(s):

Gregory Wick

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, January 9, 2020

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 11-14-19)

Docket 83

***** VACATED *** REASON: CONTINUED TO 3-12-20 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE SIXTY (60) DAYS ENTERED 1-06-20**

Tentative Ruling:

Tentative for 11/14/19:

If no appearance, issue OSC re: dismissal for lack of prosecution.

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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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.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Thursday, January 9, 2020

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
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Thursday, January 9, 2020

Hearing Room 5A

10:00 AM

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

Chapter 7

Adv#: 8:18-01107 Naylor v. Watanabe

**#10.00 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)]
(con't from 8-29-19 per order on stp. to cont pre-trial conference entered 5-10-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-23-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE, PRE-TRIAL
MOTION FILING DEADLINE, AND DEADLINES RELATED TO
EXPERT WITNESSES ENTERED 8-21-19**

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

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, January 9, 2020

Hearing Room 5A

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Defendant(s):

Neil Watanabe

Pro Se

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, January 9, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:18-01108 Naylor v. Miller

**#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)]
(con't from 8-29-19 per order on stip. to cont. pre-trial conference entered 5-10-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-23-20 AT 10:00 A.M.
PER STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE,
DISCOVERY COMPLETION DEADLINE, PRE-TRIAL MOTION FILING
DEADLINE AND DEADLINES RELATED TO EXPERT WITNESS
ENTERED 8-21-19**

Tentative Ruling:

Tentative for 11/8/18:
Status conference continued to February 28, 2018 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

**United States Bankruptcy Court
Central District of California
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Thursday, January 9, 2020

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Defendant(s):

Dale Miller

Pro Se

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
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Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:18-01109 Naylor v. Gladstone

**#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)]
(con't from 8-29-19 per order on stip. to cont. pre-trial conference entered 5-10-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO APRIL 23, 2020 PER
ORDER ON STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE
ENTERED 8/19/19**

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
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Thursday, January 9, 2020

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
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Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:18-01110 Naylor v. Doll

**#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)]
(con't from 8-29-19 per stip to cont pre-trial conference entered 5-10-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-23-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE, PRE-TRIAL
MOTION FILING DEADLINE, AND DEADLINES RELATED TO
EXPERT WITNESSES ENTERED 8-21-19**

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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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
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Thursday, January 9, 2020

Hearing Room 5B

10:00 AM

8:12-17406 Matthew Charles Crowley

Chapter 7

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

#14.00 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8) (set from s/c hrg held on 7-11-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO MARCH 12, 2020 AT 10:00 A.M. PER ORDER ON STIPULATION TO CONTINUE ENTERED 8/19/19**

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
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Thursday, January 9, 2020

Hearing Room 5B

10:00 AM

8:17-11936 Chong Ae Dugan

Chapter 7

Adv#: 8:19-01085 Weneta M.A. Kosmala v. Dugan

#15.00 PRE-TRIAL 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 (con't from s/c hrg. held on 8-01-19)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION FOR ORDER DISMISSING ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 1-07-20**

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.

Party Information

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

**United States Bankruptcy Court
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Santa Ana
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10:00 AM

**CONT... Chong Ae Dugan
Trustee(s):**

Chapter 7

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
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Thursday, January 9, 2020

Hearing Room 5B

11:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

#16.00 Motion For Leave To Withdraw Or Amend Admissions

Docket 116

Tentative Ruling:

Tentative for 1/9/20:

Defendant has likely done enough to demonstrate the necessity of this motion to preserve the integrity of the process, and to comply with the spirit of public policy to decide cases on their merits. Trustee has elected not to oppose this motion, which strengthens the argument that there is little or no risk of prejudice to Trustee.

Grant.

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

**United States Bankruptcy Court
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11:00 AM

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
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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 M Douglas Flahaut
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**United States Bankruptcy Court
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Thursday, January 9, 2020

Hearing Room

5B

2:00 PM

8:18-10064 Skin Care Solutions, LLC

Chapter 7

Adv#: 8:18-01146 Marshack v. Naughton

**#17.00 Defendant's Motion For Summary Judgment
(cont'd from 12-19-19 per order on stip. to cont. msj deadlines and hrg
entered 12-03-19)**

Docket 49

Tentative Ruling:

Tentative for 1/9/20:

This is Defendant Naughton's ("Defendant's") Rule 56 motion for summary judgment on all causes of action (except where noted) contained in the Trustee's amended complaint. These causes of action are:

- 1) Avoidance and recovery of preferential transfers under 11 U.S.C. §§ 547 and 550;
- 2) Avoidance and recovery of constructive fraudulent transfers under §§502(d), 544, 550, 551; and Cal. Civ. Code §§3439.04, 3439.05, 3439.07, 3439.08, 3439.09;
- 3) Avoidance and Recovery of Intentional Fraudulent Transfers;
- 4) Preservation of avoided transfers under §551;
- 5) Turnover of Property of the Estate under §551;
- 6) Disallowance of Claims under §502(d) & (j) (not addressed);
- 7) Fraudulent Deceit (dismissed 7/31/19);
- 8) Fraud/Intentional misrepresentation (dismissed 7/31/19);

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Thursday, January 9, 2020

Hearing Room

5B

2:00 PM

CONT...

Skin Care Solutions, LLC

Chapter 7

- 9) Intentional interference with prospective economic advantage;
- 10) Intentional interference with contractual relations; and
- 11) Avoidance of unperfected security interest under §544(a)

1. Undisputed Facts

It does not appear the following facts are in material dispute. The Debtor Skin Care Solutions, LLC ("Debtor"), incorporated under the laws of Nevada. On or about March 18, 2015, Histogen Aesthetics, LLC ("Histogen" or "Debtor's predecessor in interest") executed a promissory note in favor of Defendant in the principal sum of \$150,000. Defendant was an insider of Histogen as she was the principal in a related entity, Histogen, Inc. The note memorialized the terms and conditions of what Defendant characterizes as a personal loan to Histogen, which gave Defendant a first priority security interest in certain of Histogen's property, including accounts receivable and Histogen's products. On March 31, 2016, Defendant perfected her security interest in the collateral by filing a UCC Financing Statement with the Secretary of State for the State of California. The Trustee questions whether this was truly a loan; instead, he characterizes this as an equity buyout in favor of Defendant as Histogen's principal. For reasons explained below, it is not necessary to resolve that question at this time.

On or about May 6, 2016, Histogen and Defendant entered into an "Amendment of Promissory Note," ("Amendment") which increased the principal to include the initial principal sum of \$150,000 together with all interest accrued since execution of the original note until the execution of the amended note. The amended note further provided Defendant with first priority security interest on all future receivables including gross sales of Histogen or a successor company and a first priority security interest in all inventory of Histogen or a successor company. Defendant also secured her interest in the amended note by filing another UCC Financing Statement. Also, on May 6, 2016, Defendant resigned both as a member and manager of

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Histogen pursuant to a separate settlement agreement with Histogen. Debtor and Histogen merged on November 23, 2016, with Debtor being the surviving company.

On December 21, 2016, Defendant filed suit against Debtor and Histogen for Breach of Contract, Enforcement of Lien, Conversion, and injunction because Debtor failed to make payments under the terms of the Amendment. Defendant also sued Costco solely for the purpose of enjoining them from selling Defendant's collateral. On December 30, 2016 Defendant foreclosed on her security interest by purchasing the collateral at a noticed public sale pursuant to the California Uniform Commercial Code. Defendant then caused Debtor and Histogen to be served with the "Transfer Statement and Certification of Title."

On February 15, 2017, Defendant's *Ex Parte* Application for a TRO and OSC was heard and granted. Debtor and Defendant then entered into a stipulated agreement effectuating a permanent injunction, which directed: "DEFENDANTS HISTOGEN AESTHETICS, LLC AND SKIN CARE SOLUTIONS, LLC shall be and hereby are restrained and enjoined from receiving moneys from any such transfer, sale or disposal [of] that certain inventory[.]" This stipulation for injunction made up a Partial Settlement Agreement. The recitals to the Partial Settlement Agreement further directed:

C. The promissory note was secured by all receivables due Histogen through the preparation of a UCC Financing Statement that [was] filed with the Secretary of State of the State of California.

F. The Amendment also provided further collateral for the loan by the preparation and filing of another UCC Financing Statement. The additional collateral included a lien against all inventory owned by Histogen, among which was all GFP Power Serum XP and, in addition, to "all future receivables, including but not limited to gross sales of Maker (Defendants Histogen and Skin Care)" from the sale of same.

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Pursuant to the stipulation of both Debtor and its predecessor in interest, Costco tendered the sale's proceeds of the inventory on which Defendant had previously foreclosed directly to her. To that end, Costco issued a check to Defendant's counsel for \$95,884.28 on June 5, 2017 and a second check for \$22,415.45 on or about July 11, 2017.

Debtor's Chapter 7 petition date was January 9, 2018.

2. Summary Judgment Standards

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings. Rule 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. Rule 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

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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).

3. Preferential Transfers?

Trustee seeks to avoid the payment made by Costco to Defendant under the theory that they constitute avoidable preferential transfers pursuant to 11 U.S.C. §547(b), which statute provides in pertinent part:

"the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made—
 - (A) on or within 90 days before the date of the filing of the petition; or
 - (B) between ninety days and one year before the date of the filing of

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the petition, if such creditor at the time of such transfer was an insider;
and

(5) that enables such creditor to receive more than such creditor
would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent
provided by the provisions of this title."

Defendant persuasively argues that Trustee's theory of preferential transfer must fail as a matter of law for several reasons. First, it is necessary to identify which transfers are being attacked. The Trustee cannot attack the granting of the security interest or perfecting of same as preferences because those events all occurred *in May of 2016*, which is manifestly before the preference period, regardless of whether Defendant is an insider. There is no dispute that the transfers from Costco to Defendant occurred well outside the 90 days from the petition date (January 9, 2018) as they occurred in June and July of 2017. That leaves only the one-year lookback period for an insider under §547(b)(4)(B), which is what Trustee seems to argue applies here. Defendant disputes that she was ever an insider of Debtor, but for the sake of argument, Defendant argues that it would not matter if she had been. As the statute plainly states, the transferee must have been an insider *at the time of the transfers*. Defendant resigned her purported insider position in May of 2016, and the transfers did not take place until June and July of 2017, more than a year after Defendant ceased to be a purported insider of Debtor.

But even assuming *arguendo* there are disputed facts concerning those questions, Trustee still loses because he cannot fulfill element §547(b)(5), *i.e.* the transfer enables the transferee to do better than she would in a hypothetical Chapter 7 absent the transfer. If Defendant was a secured

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creditor, as she appears to have been, and was merely paid with proceeds of her own collateral, by reason of the Costco transfers, she does no better than she would have done as a secured creditor in Chapter 7. *See Sloan v. Zions First Nat'l Bank, N.A. (in Re Castletons, Inc.)*, 154 B.R. 574, 579 (D. Utah 1992) ("Because all prior payments to Zions were from proceeds of its own collateral, and all proceeds from the hypothetical liquidation under a 547(b)(5) would go to Zions because of its perfected, pre-preference period liens, no payments to Zions diminished the bankruptcy estate."); *See generally: Deel Rent-A-Car, Inc. v. Levine* 721 F.2d 750, 756 (11th Cir. 1983) for discussion of "Diminution of Estate Doctrine."

Trustee argues that Defendant was likely a "non-statutory insider," well within 1 year of the transfers. Trustee argues that Defendant's loan for which the promissory note was issued, was actually a disguised equity investment, and not a loan. Therefore, Trustee argues that Defendant was an equity holder rather than simply a creditor. Further, Trustee asserts that Defendant was a member, and manager of Debtor and exercised a degree of control over Debtor such that she was able to require a buyout of her equity interests, and only after that was accomplished did she withdraw from Debtor. All of this might be true but for purposes of preference analysis, it does not matter if she was also a secured creditor as of the date of the transfer.

It is worth noting, as Defendant does, that Trustee offers very little in the way of actual evidence to support this cause of action, and particularly Defendant's status as both an actual and/or non-statutory insider. This is important for at least three reasons. First, lack of supporting evidence is something of a theme throughout Trustee's opposition to this motion, and one would expect Trustee to have considerable evidence to support his arguments given that nearly 18 months has passed since the filing of the initial complaint in this adversary proceeding. Second, this is a cause of action under which Trustee would have the burden of proof at trial, and under *Celotex*, he is required to support his arguments with evidence. But thirdly, and most importantly, if the security interest and perfection of same is

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invulnerable from a preference standpoint because those events predate the preference period (even the one year extended period) then nothing comprised of a transfer later of her own collateral can have worked a preference because of §547(b)(5).

4. Fraudulent Transfers?

Trustee argues, as an alternate theory, that the transfers from Costco to Defendant constitute avoidable fraudulent conveyances (constructive and intentional) under 11 U.S.C. §548 and Cal. Civ. Code §3439, which are similar in form and substance. "Both bankruptcy law and California law define a transfer that is constructively fraudulent, in essence, as one for which the debtor does not received reasonably equivalent value and which is made when the debtor is insolvent or which renders the debtor insolvent. 11 U.S.C. § 548(b); Cal. Civ. Code § 3439.05." *Kendall v. Turner (In re Turner)* 335 B.R. 140, 145 (Bankr. N.D. Cal. 2000).

Defendant argues that there can be no fraudulent conveyance of either the constructive or intentional sort because Trustee has again failed to produce evidence of Debtor's insolvency at the time of the transfers or that Debtor became insolvent due to the transfers. On this cause of action, Trustee points to Debtor's schedules where it shows that Debtor had \$414,097.80 in assets and \$397,560.61 in liabilities. At first glance, this would seem to show that Debtor was solvent on the petition date. However, Trustee argues that the assets listed in the schedules were actually worthless. In support of this assertion, Trustee cites to the Trustee's motion for order abandoning the estate's interest, if any, in personal property, filed a couple of months after the petition date. (See Dkt. #16 in main bk case). In that motion, Trustee sought to abandon, among other things, skin care products and kits valued at \$0. These assets were listed in Debtor's Schedule A/B as being worth in excess of \$400,000. The motion to abandon was granted by this court without opposition on April 18, 2018. (See Dkt. #19 in main bk case). Trustee argues that the only other major pre-petition assets

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truly were the Costco receivables. While all of this looks like disputed facts, upon closer analysis it ends up making little difference.

Again, Trustee ignores the statutory language. Insolvency is measured at the time of the transfers, which was June and July of 2017. The remaining inventory assets were deemed valueless by Trustee well after the transfers occurred. Trustee has not presented evidence that demonstrates that Debtor was insolvent *at the time of the transfers* or became insolvent due to the transfers. These elements are critical to the finding of a fraudulent conveyance and would certainly be Trustee's burden to prove at trial, and therefore under *Celotex*, this is an important factor supporting the motion.

But even if the Costco transfers left the debtor insolvent, that is only half of what must be proven by the Trustee. Trustee must also prove for a constructively fraudulent conveyance that less than reasonable consideration was received in exchange for the transfer. Defendant cites *Carello v. Stern (In re Grail Semiconductor)*, 2017 Bankr. LEXIS 1182, *1, *21 (Bankr. E.D. Cal. Apr. 28, 2017), where the court explained that in order to avoid a purportedly fraudulent transfer, the Trustee must demonstrate that the Debtor received less than reasonably equivalent value in exchange for the transfer. The *Carello* court continued:

For purposes of the fraudulent transfer statutes, value includes satisfaction of a present or antecedent debt of the debtor . . . § 548(d) (2) (A); Cal. Civ. Code § 3439.03. Under this definition [§ 548(d) (2) (A)], payment of a preexisting debt is value, and if the payment is dollar-for-dollar, full value is given. Therefore, to the extent a transfer constitutes repayment of the debtor's antecedent or present debt, the transfer is not constructively fraudulent. *Id.* (internal citations and quotations omitted)

Defendant asserts that due to the merger with Histogen, and the Stipulation for Injunction, when Costco paid Defendant, it was actually paying down the pre-existing debt owed to Defendant by Debtor. Defendant argues

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that the payments from Costco to Defendant, if those are the transfers in question, represent dollar-for-dollar value since every dollar paid to Defendant reduced Debtor's obligation by the same amount. And as already mentioned above, at this point Defendant's status as a perfected secured creditor seems unassailable. So long as the payment was made to reduce a valid debt, consideration equivalent to the reduction is implicit. This conclusion under *Celotex* is made stronger by Trustee's comparative lack of evidence demonstrating that the transfers were constructively fraudulent on the question of exchange of value, which would undoubtedly be Trustee's burden at trial; and no presumption such as found at §547(f) assists. The court hesitates only because it sees one *possible* path to keeping the constructively fraudulent conveyance theory alive, but that would require a great deal more than appears here. Presumably, only payments on valid debts are exchanges of value. Trustee seems to argue that the debt is not really a valid debt as it is instead a disguised equity buy-out in return for nothing. But no evidence, only argument, is offered on this point.

Regarding Trustee's alternate fraudulent transfer theory (intentional), Defendant argues that Trustee has not provided any evidence tending to show that Defendant acted with intent to hinder, delay, or defraud any creditor of Debtor. Trustee has not demonstrated the existence of any of the traditional badges of fraud. Again, this would be Trustee's burden to prove at trial. Trustee's opposition makes little to no effort to make the case for an intentionally fraudulent transfer. Generally, issues of intent are inappropriate subject matter on summary judgment. However, in the absence of any evidence on this point that could indicate a genuinely disputed issue of material fact, Defendant under *Celotex* is likely entitled to judgment in her favor as a matter of law.

**5. Intentional Interference With Prospective Economic Advantage
and Contractual Relations**

Defendant argues that, aside from allegations in the amended

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complaint, Trustee has put forth no evidence that Defendant ever intentionally interfered with prospective economic advantage and/or contractual relations of Debtor. In fact, in the opposition, Trustee does not even attempt to argue for these causes of action or even mention them. It is not clear if Trustee intends to abandon these causes of action as he did with the Fraudulent Deceit and Fraud/Intentional Misrepresentation causes of action. Notwithstanding that issues of intent are inappropriate for summary judgment, Trustee would have the burden of proof on these causes of action, which would require the Trustee to put forth evidence that tends to prove these allegations. In the absence of *any* evidence and *any* argument beyond threadbare allegations in the amended complaint, the court concludes that Trustee is not attempting to seriously pursue these causes of action, so Defendant is entitled to judgment as a matter of law on these causes of action.

6. Avoidance of Unperfected Security Interest

Trustee's eleventh cause of action seeks avoidance of Defendant's purported unperfected security interest pursuant to 11 U.S.C. §544(a). Trustee argues that there are disputed issues of material fact surrounding whether Defendant's security interest remained perfected in light of California Uniform Commercial Code §9316(a)-(b) which provides:

(a) A security interest perfected pursuant to the law of the jurisdiction designated in subdivision (1) of Section 9301 or in subdivision (c) of Section 9305 remains perfected until the earliest of any of the following:

(1) The time perfection would have ceased under the law of that jurisdiction.

(2) The expiration of four months after a change of the debtor's location to another jurisdiction.

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(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subdivision (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subdivision, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Trustee argues that a question of fact exists as to whether Defendant held a perfected security interest as of the date of the Costco transfers. According to Trustee, Defendant purported to have a perfected security interest through the filing of a UCC Financing Statement on May 11, 2016 with the California Secretary of State. However, on November 23, 2016, Debtor, by way of merger, became a Nevada entity and changed jurisdictions. Trustee argues, giving Defendant the benefit of the doubt over whether she ever held a perfected security interest in California, such an interest ceased to be perfected 4 months after the merger pursuant to Cal. Com. Code §9316(a) (2). Trustee argues that the transfers made in June and July of 2017 were therefore made while Defendant did not have a perfected security interest.

Defendant counters by arguing that Debtor never changed jurisdictions and was always a Nevada entity (although the inventory was always located in California?). Defendant then persuasively argues that in a merger situation, Cal. Com. Code §9316(a)(3) is the applicable statute, or so it would seem under Commercial Code Comment 2, Example 4, as cited by Defendant. Defendant argues that because she had a valid recorded lien against Histogen's inventory, when Histogen merged into Debtor, her perfected lien remained valid for 1 year after the merger, or until November 23, 2017. This appears to be the correct application on these facts. Contrary to Trustee's assertion, the dispute as to this cause of action is legal in nature, not factual,

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as none of the operative facts seem open to reasonable dispute.

Therefore, with no disputed issues of material fact at play, Defendant's application of the law appears to be correct, which entitles her to judgment as a matter of law on this cause of action as well.

7. Other Arguments

Attempting to create a triable issue of material fact, Trustee, for the first time at the summary judgment stage, makes the argument that Defendant did not make a loan to Histogen, she made a disguised equity investment. However, again, Trustee's assertion is not supported by any evidence in the record. Instead, Trustee argues that he believes this allegation will be borne out at trial. More importantly, §510(b) is not one of the alleged causes of action.

Defendant cites *Rogan v. City of Boston*, 267 F.3d 24, 26-27 (1st Cir. 2001) where the court stated:

"Summary judgment motions are decided on the record as it stands, not on the pleadings or on the nonmovant's vision of what facts might someday be unearthed by the litigation equivalent of an archeological dig. Consequently, a plaintiff who aspires to ward off a properly documented motion for summary judgment must produce enough proof to enable her case to get to a jury. This obligation cannot be satisfied by conclusory allegations, empty rhetoric, unsupported speculation, or evidence which, in the aggregate, is less than significantly probative."

This description fits Trustee's tactic. Trustee does not cite to any specific evidence in the record and Defendant argues that Trustee's allegation is purely speculation. Defendant argues that even if the court were to entertain the argument, Trustee could still not prevail because, insofar as Trustee is arguing that the transfers were simply an equity buyback and a

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preferential transfer, Trustee still cannot establish that Defendant was an insider at the time of the transfers, which is a critical element Trustee must demonstrate to satisfy the temporal aspect. Therefore, without more from Trustee, the court should find that this attempt to create a triable issue of material fact is wholly insufficient. But, as noted, there might be some utility in arguing that payment of a subordinated debt cannot have been equivalent consideration for fraudulent conveyance analysis.

Trustee also argues that Defendant's claim should be subordinated pursuant to 11 U.S.C. §510(b). This is a new theory of relief being brought up for the first time on summary judgment. It does not appear in the original or amended complaint. As such, Defendant's motion did not address this argument. Defendant argues, and the court should agree, that it would be inappropriate for the court to address this new argument without having given Defendant adequate notice and time to prepare a defense. So, at most this argument might be for another day, assuming the Trustee can still seek to amend his complaint, an issue the court does not address here.

Defendant also notes that Trustee's sixth cause of action for disallowance of claim pursuant to 11 U.S.C. 502(d) and (j) is not addressed in this motion as it pertains to Defendant's proof of claim. This cause of action is also not addressed by Trustee. Therefore, this cause of action will remain as unchallenged.

8. Conclusion

Defendant has persuasively argued that she is entitled to judgment as a matter of law on the 1st, 2nd, 3rd, 9th 10th, and 11th causes of action. The 4th and 5th causes of action were dependent on the 1st – 3rd causes of action. The 7th and 8th claims were abandoned by Trustee, and as noted, the 6th cause of action will apparently be addressed in another proceeding.

Defendant has done enough to demonstrate that, not only does the law support her positions, Trustee has not demonstrated the existence of *any*

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evidence that supports his various theories. Trustee has also introduced new arguments for the first time at the summary judgment stage, also unsupported by evidence, and without adequate notice to Defendant to pursue relevant and responsive information in discovery. As discussed, there *might* be still life in the fraudulent conveyance theory if the Trustee could also prevail under his §510(b) subordination theory. But that will depend on both evidence and claims for relief not before the court at this time. Whether the Trustee could amend his complaint to assert those theories at this late date, and whether such a late amendment could be allowed successfully under Rule 15(c) to relate back, are also unclear, but are not decided at this time.

Grant.

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

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8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01247 U.S. Trustee v. Shyu et al

- #1.00 TRIAL 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))
(set from p/c hrg held on 8-29-19)**

Docket 2

***** VACATED *** REASON: OFF CALENDAR - JUDGEMENT IN FAVOR OF PLAINTIFF UNITED STATES TRUSTEE AND AGAINST DEFENDANT CHERI FU TO DENY DISCHARGE UNDER 11 USC SECTION 727(a)4(A) AND (2) DEFENDANT THOMAS FU (DECEASED) ENTERED 10-24-19**

Party Information

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

Joint Debtor(s):

Thomas Fu

Represented By
Evan D Smiley

Plaintiff(s):

U.S. Trustee

Represented By
Frank Cadigan

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CONT... Cheri Fu

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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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10:00 AM

8:19-14862 Garo Giragos Babikian

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

PHIL ANTHROPY HOUSE
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Tentative for 1/14/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Garo Giragos Babikian

Pro Se

Movant(s):

Phil Anthropy House

Represented By
Ronald Appel

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-14633 Garo Giragos Babikian

Chapter 13

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

PHIL ANTHROPY HOUSE
Vs
DEBTOR

Docket 7

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 12-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garo Giragos Babikian

Pro Se

Movant(s):

Phil Anthropy House

Represented By
Ronald Appel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:19-14050 Kristina Woolf

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

GOLDEN 1 CREDIT UNION
Vs.
DEBTOR

Docket 10

Tentative Ruling:

Tentative for 1/14/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Kristina Woolf

Represented By
Joseph M Tosti

Movant(s):

Golden 1 Credit Union

Represented By
Rebecca M Wicks

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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Hearing Room 5B

10:00 AM

8:16-13043 Marco Tulio Argueta

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

WILMINGTON TRUST NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 72

Tentative Ruling:

Tentative for 1/14/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Marco Tulio Argueta

Represented By
George C Panagiotou

Movant(s):

Wilmington Trust, National

Represented By
Dipika Parmar
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, January 14, 2020

Hearing Room 5B

10:00 AM

8:19-14445 Kimberly S Connell

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Tentative for 1/14/20:

Grant. Appearance is optional. Award of fees and costs is not a function of this court in this context.

Party Information

Debtor(s):

Kimberly S Connell

Pro Se

Movant(s):

U.S. BANK NATIONAL

Represented By
Diane Weifenbach

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13217 Hector Leonel Esquivel Contreras and Guadalupe Quintana Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation (2017 Honda Accord - \$22,911.19)

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Leonel Esquivel Contreras

Represented By
Marlin Branstetter

Joint Debtor(s):

Guadalupe Quintana Montiel

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13243 Mohamad Musa Hamdan

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc. dba Chrysler Capital as servicer for CCAP Auto Lease Ltd.(RE Leased 2017 Fiat 500 VIN: 3C3CFFGE0HT565576) [CB CASE]

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mohamad Musa Hamdan	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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13357 Mauricio Climaco Ortiz

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and JPMorgan Chase Bank, N.A. (RE: 2017 Toyota Corolla - \$18,510.56)

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mauricio Climaco Ortiz

Represented By
Marlin Branstetter

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13360 Anselmo Al Velazquez Sandoval and Betsy Velazquez

Chapter 7

#4.00 Pro se Reaffirmation Agreement Between Debtor and SchoolsFirst Federal Credit Union - (2015 Chevrolet 1500 - \$21,448.86) (SC CASE)

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anselmo Al Velazquez Sandoval

Represented By
Marlin Branstetter

Joint Debtor(s):

Betsy Velazquez

Represented By
Marlin Branstetter

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, January 15, 2020

Hearing Room

5B

9:30 AM

8:19-13360 Anselmo Al Velazquez Sandoval and Betsy Velazquez

Chapter 7

**#5.00 Pro se Reaffirmation Agreement Between Debtor and SchoolsFirst Federal
Credit Union - (2015 Nissan Juke - \$14,094.15) (SC CASE)**

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anselmo Al Velazquez Sandoval

Represented By
Marlin Branstetter

Joint Debtor(s):

Betsy Velazquez

Represented By
Marlin Branstetter

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13515 Ronit Bustillos

Chapter 7

**#6.00 Pro se Reaffirmation Agreement Between Debtor and Ally Bank
(2016 Toyota Camry - \$12,745.03) (CB CASE)**

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronit Bustillos

Represented By
Sean S Vahdat

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 15, 2020

Hearing Room 5B

9:30 AM

8:19-13597 Rogelio Andres Fuentes Diaz and Liseth Vasquez

Chapter 7

**#7.00 Pro se Reaffirmation Agreement Between Debtor and SchoolsFirst Federal
Credit Union (RE 2003 Acura MDX) [CB Case]**

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rogelio Andres Fuentes Diaz

Represented By
Gregory E Nassar

Joint Debtor(s):

Liseth Vasquez

Represented By
Gregory E Nassar

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 15, 2020

Hearing Room 5B

9:30 AM

8:19-13739 Raul Ramiro Salazar

Chapter 7

**#8.00 Pro se Reaffirmation Agreement Between Debtor and Nuvision Credit Union
(RE: 2017 Chevrolet Camaro - \$32,658.71)**

Docket 18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul Ramiro Salazar

Represented By
Marlin Branstetter

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13740 Jasmine Alvarado

Chapter 7

#9.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc., dba Chrysler Capital (2013 Dodge Durango - \$9695.02)

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jasmine Alvarado

Represented By
Marlin Branstetter

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13843 Cristobal Rito and Yeime Estela Rito

Chapter 7

#10.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation (RE 2017 Honda Civic) [CB CASE]

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cristobal Rito Pro Se

Joint Debtor(s):

Yeime Estela Rito 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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13843 Cristobal Rito and Yeime Estela Rito

Chapter 7

#11.00 Pro se Reaffirmation Agreement Between Debtor and SchoolsFirst Federal Credit Union (RE 2017 Honda Fit) [CB Case]

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cristobal Rito Pro Se

Joint Debtor(s):

Yeime Estela Rito 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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-13869 Iyad Zureiqi and Vanda Malitska

Chapter 7

#12.00 Pro se Reaffirmation Agreement Between Debtor and BMW Bank of North America (RE: 2017 BMW X5 Utility 4D 35i AWD) [ES CASE]

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Iyad Zureiqi

Represented By
Michael D Franco

Joint Debtor(s):

Vanda Malitska

Represented By
Michael D Franco

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 15, 2020

Hearing Room 5B

9:30 AM

8:19-14100 Sandra Irene Farias

Chapter 7

#13.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation (RE: 2019 Honda Accord - \$30,691.21) [ES Case]

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Irene Farias

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-14103 Pedro Aguirre Rosas and Luz Maria Aguirre

Chapter 7

**#14.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation
(2015 Toyota Camry - \$13,554.30)**

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro Aguirre Rosas

Represented By
Marlin Branstetter

Joint Debtor(s):

Luz Maria Aguirre

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-14104 Juan Lopez Orozco and Guadalupe Lopez

Chapter 7

#15.00 Pro se Reaffirmation Agreement Between Debtor and Ally Financial (RE 2015 Hyundai Elantra) [CB CASE]

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Lopez Orozco

Represented By
Marlin Branstetter

Joint Debtor(s):

Guadalupe Lopez

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-14105 Marco Enrique Ochoa

Chapter 7

#16.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc. (14 BMW 4 SERIES - \$28,018.38)

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marco Enrique Ochoa

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, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-14299 Brystin Marie Davy

Chapter 7

**#17.00 Pro se Reaffirmation Agreement Between Debtor and CarMax Auto Finance
(2015 Ford Flex - \$23,349.65) (SC CASE)**

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brystin Marie Davy	Pro Se
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Trustee(s):

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

Wednesday, January 15, 2020

Hearing Room 5B

9:30 AM

8:19-14352 Amber Kristen Bailey Armenta

Chapter 7

**#18.00 Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.
(2013 Honda Odyssey Wagon 5D EX V6 - \$5,171.93)**

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amber Kristen Bailey Armenta

Represented By
Heather J Canning

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 15, 2020

Hearing Room 5B

9:30 AM

8:19-14365 Lorelie Lay Macapagal Yujuico

Chapter 7

#19.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation (RE 2018 Honda HR-V) [CB CASE]

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lorelie Lay Macapagal Yujuico

Represented By
Sean S Vahdat

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 15, 2020

Hearing Room 5B

9:30 AM

8:19-14544 Richard Mangiyo Perez

Chapter 7

**#20.00 Reaffirmation Agreement Between Debtor and CarMax Auto Finance
(2012 Ford Focus - \$4810.24)**

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Mangiyo Perez	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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

#1.00 Confirmation of Chapter 13 Plan

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Charles Ragan Peyton III

Represented By
Richard G Heston
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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-12160 William Brent Stecker

Chapter 13

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

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-12629 Eduardo Meza

Chapter 13

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

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13020 Patricia Bullock

Chapter 13

**#4.00 Confirmation of Chapter 13 Plan
(cont'd from 12-18-19)**

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.

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

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

Wednesday, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13139 Brian Leach

Chapter 13

#5.00 Confirmation of Chapter 13 Plan
(cont'd from 12-18-19)

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.

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13186 Angela Huichuan Yu

Chapter 13

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

Docket 2

Tentative Ruling:

Tentative for 12/18/19:

Does the Trustee still object to confirmation in light of Declaration filed 12/10?

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13285 Robert Igor Gaul

Chapter 13

**#7.00 Confirmation of 1st Amended Chapter 13 Plan
(cont'd from 11-20-19)**

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13420 James Swaner and Allyson Swaner

Chapter 13

**#8.00 Confirmation of Chapter 13 Plan
(cont'd from 12-18-19)**

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13427 Daniel Patrick Pinto and Jessica D Pinto

Chapter 13

#9.00 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.

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13442 Sazzad Hasnat and Nahid Hasnat

Chapter 13

**#10.00 Confirmation of Chapter 13 Plan
(cont'd from 11-20-19)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sazzad Hasnat

Represented By
Christopher J Langley

Joint Debtor(s):

Nahid Hasnat

Represented By
Christopher J Langley

Movant(s):

Sazzad Hasnat

Represented By
Christopher J Langley

Nahid 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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13886 Gary C. Macrides

Chapter 13

**#11.00 Confirmation of Chapter 13 Plan
(cont'd from 12-18-19)**

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-13931 Cesar Larios and Trudy Rosa Larios

Chapter 13

**#12.00 Confirmation of Chapter 13 Plan
(cont'd from 12-18-19)**

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14117 Paul Nguyen

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul Nguyen

Represented By
Chris T Nguyen

Movant(s):

Paul Nguyen

Represented By
Chris T 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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14129 Raed G. J. Mustafa

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raed G. J. Mustafa

Represented By
Julie J Villalobos

Movant(s):

Raed G. J. Mustafa

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14181 Brian Wright and Loretta Wright

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Wright

Represented By
Amanda G Billyard

Joint Debtor(s):

Loretta Wright

Represented By
Amanda G Billyard

Movant(s):

Brian Wright

Represented By
Amanda G Billyard

Loretta Wright

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14201 Kevin P Kelly and Megan E Kelly

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevin P Kelly

Represented By
Tina H Trinh

Joint Debtor(s):

Megan E Kelly

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14203 Angelica Maria Duarte

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelica Maria Duarte

Represented By
Ethan Kiwhan Chin

Movant(s):

Angelica Maria Duarte

Represented By
Ethan Kiwhan Chin

Trustee(s):

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14239 Ray Yousef Diab

Chapter 13

#18.00 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 12-04-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ray Yousef Diab

Represented By
Siamak E Nehoray

Trustee(s):

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14245 Tae H Ko

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE CONVERTED
TO CHAPTER 7 ON 12-3-19 DEBTOR'S NOTICE OF CONVERSION
FROM CHAPTER 13 TO CHAPTER 7 FILED 12-3-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tae H Ko

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14264 Bosha Dorman

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bosha Dorman

Represented By
Halli B Heston

Movant(s):

Bosha Dorman

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14266 Kristi Leigh Rizzo Ababon

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristi Leigh Rizzo Ababon

Represented By
Arlene M Tokarz

Movant(s):

Kristi Leigh Rizzo Ababon

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14344 Maria De Lourdes Chavez

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria De Lourdes Chavez

Represented By
David R Chase

Movant(s):

Maria De Lourdes Chavez

Represented By
David R Chase
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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14411 Wesby Owens, Jr. and Cheyenne Ramona Owens

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wesby Owens Jr.

Represented By
Sunita N Sood

Joint Debtor(s):

Cheyenne Ramona Owens

Represented By
Sunita N Sood

Movant(s):

Wesby Owens Jr.

Represented By
Sunita N Sood
Sunita N Sood

Cheyenne Ramona Owens

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14428 Dax Bainsworth Guillory

Chapter 13

#24.00 Confirmation Of 1st Amended Chapter 13 Plan

Docket 11

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER DISMISSING CASE FOR FILING OUT OF DISTRICT
ENTERED 12-20-19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dax Bainsworth Guillory

Represented By
Miguel Duarte

Movant(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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14430 John Zubko

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Zubko

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14438 Bradley Ray Fox

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED
FOR FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR PLAN
ENTERED 12-02-19

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14448 Henry C Vorwerk

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry C Vorwerk

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14456 Mario Ortiz

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mario Ortiz

Represented By
Sunita N Sood

Movant(s):

Mario Ortiz

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14462 William Alfred Butler and Nanette Marie Butler

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Alfred Butler

Represented By
Heather J Canning

Joint Debtor(s):

Nanette Marie Butler

Represented By
Heather J Canning

Movant(s):

William Alfred Butler

Represented By
Heather J Canning

Nanette Marie Butler

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, January 15, 2020

Hearing Room 5B

1:30 PM

8:19-14463 Gladys Najarro

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 12-03-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gladys Najarro

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14486 Rosalie A Dufrenne

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosalie A Dufrenne

Represented By
Kevin Tang

Movant(s):

Rosalie A Dufrenne

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 15, 2020

Hearing Room 5B

3:00 PM

8:15-10606 Barry Edward Cambeilh and Alberta Bonita Cambeilh

Chapter 13

#32.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding

Docket 62

Tentative Ruling:

Tentative for 1/15/20:
Grant unless all defaults cured.

Party Information

Debtor(s):

Barry Edward Cambeilh

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Alberta Bonita Cambeilh

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:15-10606 Barry Edward Cambeilh and Alberta Bonita Cambeilh

Chapter 13

#33.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 63

Tentative Ruling:

Tentative for 1/15/20:

See #32. If the debtors have cured the tax refund and returns issue, the court will consider whether, in light of the alleged additional \$1500 of income, and whether undisclosed further tax refunds, mandate either denial of the motion or further adjustment.

Party Information

Debtor(s):

Barry Edward Cambeilh

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Alberta Bonita Cambeilh

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:16-13905 Steven Mark Petersen

Chapter 13

#34.00 Verified Motion For Order Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))

Docket 44

Tentative Ruling:

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Steven Mark Petersen

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#35.00 Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))

Docket 122

Tentative Ruling:

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 15, 2020

Hearing Room 5B

3:00 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

**#36.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 12-18-19)**

Docket 40

Tentative Ruling:

Tentative for 1/15/20:
Is the debtor current, or not? See #37.

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

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

Wednesday, January 15, 2020

Hearing Room 5B

3:00 PM

CONT... Martin Garcia and Desiree Marie Garcia

Chapter 13

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, January 15, 2020

Hearing Room

5B

3:00 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

**#37.00 Motion under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments
(cont'd from 12-18-19)**

Docket 45

Tentative Ruling:

Tentative for 1/15/20:
Same. Has this been superceded by motion that has been set for hearing on February 9 at 3pm?

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.

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:17-12477 Geraldine Arguelles

Chapter 13

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

Docket 104

Tentative Ruling:

Tentative for 1/15/20:
Grant unless current.

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 15, 2020

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
(cont'd from 12-18-19)**

Docket 51

Tentative Ruling:

Tentative for 1/15/20:
Same.

Tentative for 12/18/19:
Grant unless current.

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:18-10221 Tony Kallah and Joulia Kallah

Chapter 13

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

Docket 72

Tentative Ruling:

Tentative for 1/15/20:
Grant unless current.

Party Information

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:18-11129 Elvin Lorenzana and Somer Asako Shimada

Chapter 13

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

Docket 54

Tentative Ruling:

Tentative for 1/15/20:

A motion to modify has been filed. Continue to allow for processing.

Party Information

Debtor(s):

Elvin Lorenzana

Represented By
Anerio V Altman

Joint Debtor(s):

Somer Asako Shimada

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, January 15, 2020

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.
(cont'd from 12-18-19)**

Docket 100

Tentative Ruling:

Tentative for 1/15/20:
Same.

Tentative for 12/18/19:
Grant unless current.

Party Information

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, January 15, 2020

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))
(cont'd from 12-18-19)

Docket 55

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
NOTICE OF WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER
DISMISSING CHAPTER 13 FILED 1-14-20**

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, January 15, 2020

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 12-18-19)**

Docket 46

Tentative Ruling:

Tentative for 1/15/20:
Same.

Tentative for 12/18/19:
Same.

Tentative for 11/20/19:
Grant unless current.

Party Information

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

#45.00 Chapter 13 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c)) (failure to make plan payments) (cont'd from 12-18-19)

Docket 54

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 FILED 12-30-19**

Tentative Ruling:

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

Party Information

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#46.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c)) (failure to make plan payments)

Docket 32

Tentative Ruling:

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Annelize Ladage

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 15, 2020

Hearing Room 5B

3:00 PM

8:19-12603 David Bergman and Anne Bergman

Chapter 13

#47.00 Trustee's Motion to Dismiss Case Due to Material Default Of A Plan Provision

Docket 37

Tentative Ruling:

Tentative for 1/15/20:

Motion to modify was filed 1/2. Continue to allow for processing.

Party Information

Debtor(s):

David Bergman

Represented By
Gary Polston

Joint Debtor(s):

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
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Wednesday, January 15, 2020

Hearing Room 5B

3:00 PM

8:14-12418 Duc Anh Newtran and Min Ju Newtran

Chapter 13

#48.00 Motion To Reopen Chapter 13 Case .

Docket 106

Tentative Ruling:

Tentative for 1/15/20:
Grant.

Party Information

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:18-12052 Frank Bowers, Jr.

Chapter 13

#49.00 Application For Compensation For Period: 4/8/2019 to 10/31/2019
(cont'd from 12-18-19)

PETER RASLA, DEBTOR'S ATTORNEY

FEE:	\$1,450.00
EXPENSES:	\$0.00

Docket 65

Tentative Ruling:

Tentative for 1/15/20:
Grant.

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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, January 15, 2020

Hearing Room 5B

3:00 PM

CONT... Frank Bowers, Jr.

Chapter 13

Party Information

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, January 15, 2020

Hearing Room 5B

3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

#50.00 Application For Supplemental Fees For Period: 4/1/2019 to 4/1/2019

DAVID R CHASE, DEBTOR'S ATTORNEY

FEE: \$750.00
EXPENSES: \$0.00

Docket 48

Tentative Ruling:

Tentative for 1/15/20:
Grant.

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**

Wednesday, January 15, 2020

Hearing Room

5B

3:00 PM

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

Chapter 13

#51.00 First Interim Fee Application Period: 5/31/2019 to 11/23/2019:

RICK AUGUSTINI, SPECIAL COUNSEL FOR DEBTOR

Fee:	\$16,254.31
Expenses:	\$126.31

Docket 91

Tentative Ruling:

Tentative for 1/15/20:

Creditor Michael Kaplan ("Creditor") objects to the fee application of Rick Augustini ("Applicant") on grounds that the application evidences the practice of block billing, redacting, and billing for work that was unlikely to benefit the estate. Creditor also requests that court should assess a penalty against Applicant for Mr. Augustini's alleged personal conduct described as uncooperative, belligerent, and unprofessional. In sum, Creditor argues that the fee request of \$16,128.00 in fees and \$126.31 in costs for a total of \$16,254.31 should be reduced by no less than \$7670.50. Applicant has replied. The court feels some adjustment may be in order, but not nearly to the level requested, as discussed below:

1. Block Billing

Creditor argues that block billing is disfavored because it does not allow the court to assess the reasonableness of the fees being requested in the time entry. Creditor points to several instances where Applicant appears to have block billed. However, most of the block billed items are of relatively

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, January 15, 2020

Hearing Room

5B

3:00 PM

CONT...

James G. Caringella and Kathleen J. Caringella

Chapter 13

short duration (1 hour or less). It is difficult to assess whether each task described in the entries constitutes a reasonable amount of time for that task, but the time spent on those several tasks could not have been very long. There are some time entries that are considerably longer in duration (3 hours or more) that seem to be more the type of entry that courts disfavor. But even still, given the tasks in the description, the amount of time spent on these tasks does not seem, on its face, to be unreasonable, despite the lumping together of several tasks. While it is somewhat difficult to assess the reasonableness of the block billed entries (almost by definition), at the same time these entries identified by Creditor do not seem to be obviously unreasonable. Therefore, cause to cut the time of these allegedly block-billed entries is weak, and the cost of redoing the application may not be worth the effort. Therefore, Applicant is given the option of accepting an arbitrary nominal reduction of 5%, or, the application may be resubmitted with suitable breakout of the block entries.

2. Redactions

Creditor pulls out several billing entries that contain redactions. Creditor argues that these entries should be disallowed because, again, the information redacted from the entry makes assessing the reasonableness of the fee difficult. Case law cited by Creditor suggests that this billing practice is highly disfavored for this reason. Creditor also notes that several of these redacted entries could also be block billed entries. However, like the block billed section above, nearly all of the identified redacted entries are relatively short in duration, i.e. .5 hours each or less. Therefore, another arbitrary nominal 5% reduction in fees is warranted as an alternative to redoing the application with unredacted entries.

3. Unnecessary Services

Creditor argues that Applicant continued to bill for services that were

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Santa Ana
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CONT... James G. Caringella and Kathleen J. Caringella Chapter 13

either wholly unnecessary and/or moot after the dismissal of plaintiffs' state court action on October 21, 2019. For example, Creditor asserts that these services included drafting unnecessary discovery motions after the underlying case was dismissed. Again, like the other grounds for objections, the time entries spent on these unnecessary tasks is relatively small, amounting to only 2.7 hours, with most entries being .4 hours or less in duration.

Applicant argues that because he was served with notice of the dismissal of Plaintiff's case by mail, notice did not reach him immediately. Once he had notice of the dismissal, he ceased working and billing on the matter substantively. Applicant concedes that perhaps 1.7 hours of work was performed unnecessarily. The rest of the time, Applicant asserts, is still justified because it involved attempts to recover fees and costs incurred in connection with the motion to compel that Creditor let Applicant file despite knowing he intended to dismiss the underlying claim. This is an unfortunate state of events, but the estate should not be billed for unnecessary work. As the same time, it is minimal; fees should likely be reduced by 1.7 hours to account for the time bill that turned out to be unnecessary.

4. Applicant's Behavior

Creditor argues that Applicant's personal demeanor was unprofessional to say the least. Creditor asserts that Applicant engaged in scorched earth tactics, including being excessively uncooperative and uncollaborative. Creditor also argues that Applicant used threats and personal insults freely, which is conduct that should not go unpunished. Unsurprisingly, Applicant disputes this characterization. Applicant states that he did not engage in the conduct described but could just as easily accuse Creditor and his counsel of similar misconduct.

The case was obviously hotly contested and appears to have created or exacerbated a toxic relationship between the parties. It is impossible to

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know with certainty what transpired between the parties. The court laments the lack of civility which occurs all too often and wonders why attorneys insist upon making their already difficult tasks that much less bearable. Nevertheless, no evidence is presented that compels court intervention here. Therefore, no reduction in fees should be given for alleged misconduct.

5. Chapter 13 Trustee's Comments

The Chapter 13 Trustee takes no position. However, Trustee notes that Applicant or Debtor's counsel was required per the last claim objection hearings (orders at docket #'s 68 and 69) to submit filings to the Court at the equivalent level of a status report regarding the state court proceedings and the status of the creditor's claim. That has not been done. This fee application cannot serve as a substitute for such a report. Trustee further notes that if the court grants this Motion, Trustee requests that the court include in the Order that no more than half of available funds per month be paid towards this claim as there is a concurrent fee request by Debtor's other counsel. Finally, Trustee notes there is no Code requirement or local rule that prioritizes different party's fee claims.

6. Conclusion

Creditor has pointed out a few instances of poor billing practices that warrant a reduction in his fees. The \$7600 requested in reductions, however, does seem steep given that very few if any of the time entries were patently unreasonable. Therefore, an arbitrary reduction of roughly 5% on the allegedly block billed and redacted entries is appropriate. The fees that turned out to be unnecessary, though perhaps not the fault of Applicant, should be discounted. The alleged block billed entries total \$4898. 5% of this number is \$244.90. The entries with allegedly unwarranted redaction total \$1785. 5% of

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this number is \$89.25. The unnecessary billing came out to 1.7 hours. The billing was done by Applicant at .3 hours (billing rate \$425), and by Tracy Anielski at 1.4 hours (billing rate \$325). Total reductions are \$582.5. This is a grand total of reductions at \$916.65. Therefore, the new total of fees that should be granted is \$15,211.35. If Applicant does not accept this reduction, it may resubmit its application breaking out the block billed portions and removing the redactions, but the \$582.50 reduction for unneeded services will remain. If Applicant chooses to resubmit its application, no time will be allowed for additional time spent in that effort.

Allow fees in the amount of \$15,211.35 and costs of \$126.31, or the Applicant may resubmit its application on block billed and redacted portions. The Trustee may apportion payments of allowed fees as he suggests.

Party Information

Debtor(s):

James G. Caringella

Represented By
Kelly H. Zinser
Rick Augustini

Joint Debtor(s):

Kathleen J. Caringella

Represented By
Kelly H. Zinser
Rick Augustini

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Chapter 13

#52.00 First Interim Compensation for Period: 11/21/2018 to 11/30/2019:

KELLY H. ZINSER, DEBTOR'S ATTORNEY

FEE:	\$25282.50
EXPENSES:	\$594.66

Docket 93

Tentative Ruling:

Tentative for 1/15/20:

Allow, subject to Applicant obtaining written non-opposition of client, or statement that client did not cooperate.

Party Information

Debtor(s):

James G. Caringella

Represented By
Kelly H. Zinser
Rick Augustini

Joint Debtor(s):

Kathleen J. Caringella

Represented By
Kelly H. Zinser
Rick Augustini

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-11359 Ronald E. Ready

Chapter 13

#53.00 Objection To The Dreyfuss Firms's Proof Of Claim No. 4-1

Docket 79

Tentative Ruling:

Tentative for 1/15/20:

This question turns on whether any of the assigned commissions still exist. If so, they are covered by the assignment order, and the creditor has an interest as a secured creditor therein. If not because they have been spent, then there is no basis to characterize the claim as secured and it should be allowed as unsecured only.

Party Information

Debtor(s):

Ronald E. Ready

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-13139 Brian Leach

Chapter 13

#54.00 Motion For Orders Determining Value Of Secured Claim

Docket 44

Tentative Ruling:

Tentative for 1/15/20:
Grant.

Party Information

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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8:18-13419 Diane Weinsheimer

Chapter 13

**#55.00 Confirmation of Chapter 13 Plan
(con't from 11-20-19)**

Docket 2

Tentative Ruling:

Tentative for 1/15/20:
Status? See #56.

Tentative for 11/20/19:
Is resolution of #58 a precondition to confirmation?

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.

Tentative for 8/21/19:
Evidentiary hearing on claim objection is being continued by stipulation?

Tentative for 5/29/19:
Same.

Tentative for 4/17/19:
Is a resolution of claim objection (see #43) necessary before confirmation?

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Party Information

Debtor(s):

Diane Weinsheimer

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-13419 Diane Weinsheimer

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#56.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing
(con't from 11-20-19 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 11-18-19)

Docket 26

***** VACATED *** REASON: CONTINUED TO 2-19-20 AT 3:00 P.M.
PER ORDER APPROVING STIPULATION TO CONTINUE
EVIDENTIARY HEARING ON DEBTOR'S OBJECTION TO PROOF OF
SHELLPOINT MORTGAGE SERVICING ENTERED 1-13-20**

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

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Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
[11 U.S.C. Section 523(a)(2)(A) and (a)(4)]
(cont'd from 12-12-19)**

Docket 1

Tentative Ruling:

Tentative for 1/16/20:

This conference will travel together with the dismissal motion. Tentative on that is to continue to allow more briefing. Appearance not required.

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

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Jamie E Wrage

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

#2.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (a)(4)]

Docket 10

Tentative Ruling:

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and illegal under federal law.

Even though cannabis sale has now been legal in several states for

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CONT... **Guy S. Griffithe**

Chapter 7

several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.' *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue.

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The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not cause mandatory dismissal." *Id.* at *7.

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The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

Perhaps the better questions are, should only part of the court's

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jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

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

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

**#2.10 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.
(cont'd from 1-9-20)**

Docket 1

Tentative Ruling:

Tentative for 1/16/20:
Same as #1. Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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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8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

#3.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]

Docket 8

Tentative Ruling:

Tentative for 1/16/20:

This is Defendant/Debtor, Guy Griffithe's ("Defendant's") motion to dismiss the complaint of Plaintiff/Creditor, Joseph Samec. Plaintiff's complaint is styled such that he is essentially requesting a determination that Defendant's conduct, if proven, would constitute non-a dischargeable debt pursuant to 11 U.S.C. §523(a)(2)(A) [actual fraud] and (a)(4) [defalcation while acting in fiduciary capacity, embezzlement or larceny]. It is not clear whether Plaintiff intends to have the case tried in this court or in state court, and there is a question of abstention but not before the court at this moment.

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

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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 enough 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.*

2. Alleged Facts

Plaintiff in his complaint alleges that, in exchange for a 90-day loan from Plaintiff in the amount of \$100,000, Defendant signed a promissory note on March 30, 2017 on behalf of Bridgegate Picture Corp. ("Bridgegate") and signed also as a personal guarantor. The promissory note was delivered by Plaintiff's then financial advisor, Maartin Rossouw ("Rossouw"). Plaintiff claims that Rossouw acted as a dual agent for both Plaintiff and Defendant. When debt on the promissory note became due, Plaintiff attempted to collect through Rossouw, but to no avail. This went on for several months. To date, Plaintiff has received only \$25,000, but apparently received other checks returned for insufficient funds. It is noteworthy what the complaint does not contain. There are few if any alleged representations attributed to the Defendant, or even to Rossouw. In short, very little is given that would separate this case from a simple breach of contract case. It should come as no surprise that all bankruptcies are filled with breach of contract claims, and it is only those few where the debt was procured through one or more of the "bad acts" described in §523(a) that discharge is correctly challenged.

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3. Plaintiff's Claim Under §523(a)(2)(A)

Plaintiff claims that Defendant's alleged misconduct requires a finding that the debt he has incurred with respect to the unpaid loan is not dischargeable pursuant to §523(a)(2)(A). To establish a claim under §523(a)(2)(A), a plaintiff must establish: (1) a representation of fact by the debtor; (2) that was material; (3) that the debtor knew at the time to be false; (4) that the debtor made with the intention of deceiving the creditor; (5) upon which the creditor relied; (6) and that the creditor's reliance was reasonable; (7) that damage proximately resulted from the misrepresentation. See *Rubin v. West (In re Rubin)*, 875 F.2d 755, 759 (9th Cir. 1989); see also, *Britton v. Price (In re Britton)*, 950 F.2d 602, 604 (9th Cir. 1991). A claim under this "fraud" exception requires that the claim satisfy the heightened pleading requirements for fraud pursuant to F.R.C.P. 9(b). See *In re Jacobs*, 403 B.R. 565, 574 (Bankr. N. D. Ill. 2009) (citations omitted).

F.R.C.P. 9(b) and F.R.B.P. 7009 provide: "In alleging fraud, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." While intent or knowledge may be averred generally, however, the plaintiff must still plead the events claimed to give rise to an inference of intent or knowledge *Devaney v. Chester*, 813 F.2d 566, 568 (2d Cir. 1987), which may be accomplished by pleading facts consistent with certain well established "badges of fraud." *In re Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2004).

Here, Plaintiff in his complaint alleges that at the time of the loan, Defendant knew that Bridgegate was severely undercapitalized and did not have the resources to fulfill the terms of the promissory note or Defendant's personal guarantee. Plaintiff alleges that Defendant has entered into similar

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agreements with other investors, and that those promissory notes too are in default. Plaintiff alleges that he detrimentally relied on Defendant's personal guarantee of the loan in making his decision and that had he known Bridgegate's true financial condition, he would never have invested. As a result of Defendant's default, which Plaintiff argues was intentional, Plaintiff has been damaged in an amount not less than the remaining balance of the loan.

But, are the facts alleged in Plaintiff's complaint, taken as true, even close to meeting the minimal pleading standards set forth above? No allegation is made that Defendant represented anything to Plaintiff, whether about his own financial position, that of Bridgegate, or otherwise. There is no specific allegation that Rossouw made representations either. As *Iqbal* and *Twombly* make clear, there must be enough *factual* detail to support a claim under §523(a)(2)(A), especially given the heightened pleading standards under Rule 9(b). Merely reciting the elements of fraud is insufficient; there must be corresponding facts alleged supporting each of the elements. What was said, by whom, when, etc. Was it oral or in writing?

Surely, not every promissory note supported by a personal guarantee amounts to fraud, false pretenses, or intentional misrepresentation when the promisor and guarantor cannot fulfill those obligations. Even considering the other notes allegedly made to other investors on similar terms, the court remains unpersuaded that fraudulent conduct has been pled with enough specificity for Rule 9. Even shaky borrowers are entitled to borrow money, and eventual default does not necessarily mean this was a foregone conclusion. In opposition to this motion, Plaintiff argues that Defendant has had over 20 lawsuits filed against him for nonpayment of debt going back over a decade. Unfortunately, this was not raised in the actual complaint. Moreover, we cannot rely on mere inference. While widespread and prolonged giving of bad promissory notes *might* suggest that the issuer was

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making them intentionally without the ability or inclination to repay, all the specifics need to be provided and Plaintiff must be able to allege specifically that these were an intentional device to obtain funds under false pretenses. The Complaint as it stands is very short of this standard.

4. Plaintiff's Claim Under §523(a)(4)

11 U.S.C. § 523(a)(4) provides an exception to discharge "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny[.]"

Here, Plaintiff alleges that Defendant, as President of Bridgegate, owed fiduciary duties to his investors, including Plaintiff. Plaintiff then alleges that Defendant breached those duties by:

- (1) failing to honor the personal guarantee;
- (2) failing to pay the note by the dates set forth in the note;
- (3) failing to pay court costs;
- (4) failing to pay late fees;
- (5) misrepresenting the financial status of the company;
- (6) Engaging in criminal activity, which put the company in peril;
- (7) Gross mismanagement;
- (8) Theft and conversion of company assets;
- (9) failure to disclose money to Plaintiff, which he was entitled to receive;
- (10) Diverting assets so as to put them beyond the reach of Plaintiff;

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(11) Paying himself excessive and/or non-disclosed salaries.

This is quite a list. But unfortunately, like the first claim for relief, this one suffers from the same lack of detailed factual allegations enough to satisfy the heightened pleading requirements under Rule 9(b). The above listed allegations appear to be nothing more than legal conclusions that are either insufficiently supported or not supported at all by the facts as alleged. For example, it is not at all clear how or why Plaintiff regards himself as an "investor" rather than merely a lender. A factual example for each of the 11 subparts would also add some substance to the complaint and possibly supply some support for the necessary allegation that Defendant was as to Plaintiff a fiduciary. Merely being a lender does not alone create a fiduciary relationship. It is also not clear whether Plaintiff is alleging embezzlement and/or larceny in the Complaint. In short, this cause of action is not supported by enough facts to state a claim that is plausible on its face.

The court notes that Plaintiff is proceeding *in pro se* and encourages Plaintiff to retain counsel. The Complaint involves issues that can be quite subtle and more complex than they may seem to a lay person. This is especially true when the opponent is represented by counsel. The court also notes that Plaintiff is a plaintiff, along with his wife, in another adversary proceeding involving some of the same issues. Retaining counsel could be of significant benefit to Plaintiff. Thus, since the Ninth Circuit has routinely held that leave to amend should be liberally granted, so it will be in this case. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

5. Jurisdiction Issue

The Reply also curiously argues that the court does not have jurisdiction over this adversary proceeding because the debt at issue was incurred in connection with a cannabis business. The court needs

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clarification on whether Bridgegate Picture Corp. is a cannabis concern or, as its name would suggest, a motion picture company, or the like. The court is aware that the other adversary proceedings do relate to loans made primarily for investment in a cannabis business, including one adversary proceeding where Mr. Samec is also a Plaintiff (along with his wife), which adds a layer of confusion that requires clarification.

Grant with leave to amend

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe Et.Al

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01200 Samec et al v. Griffithe

**#3.10 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.
(cont'd from 1-9-20)**

Docket 1

Tentative Ruling:

Tentative for 1/16/20:
See #4. The status conference will travel with any motion to dismiss.
Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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
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8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01200 Samec et al v. Griffithe

#4.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]

Docket 8

Tentative Ruling:

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and illegal under federal law.

Even though cannabis sale has now been legal in several states for

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several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.' *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue.

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The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not cause mandatory dismissal." *Id.* at *7.

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The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

Perhaps the better questions are, should only part of the court's

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jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Brenda Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01201 Bagot v. Griffithe

**#5.00 STATUS CONFERENCE RE: Complaint Of NonDischargeability And Exception
From Discharge Of Debts
(cont'd from 12-19-19)**

Docket 1

Tentative Ruling:

Tentative for 1/16/20:

See #6. The status conference will travel together with any dismissal motions. Appearance not required.

Tentative for 12/19/19:

Status conference continued to January 16, 2020 at 10:00 a.m. to coincide with motion to dismiss.

Party Information

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

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8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01201 Bagot v. Griffithe

#6.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]

Docket 6

Tentative Ruling:

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and illegal under federal law.

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The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue.

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"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not cause mandatory dismissal." *Id.* at *7.

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The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

Perhaps the better questions are, should only part of the court's

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jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Steven Bagot

Represented By
Heidi Urness

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Adv#: 8:19-01202 Wick v. Guy Griffithe

#6.10 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt [11 usc Section 523 (a)(2)(A) And (a)(4) Case RIC 1821749 Wick vs. Griffthe Et.Al.

Docket 1

Tentative Ruling:

Tentative for 1/16/20:

See #7. The status conference will travel together with dismissal motions.

Appearance not required.

Tentative for 1/9/20:

Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Pro Se

Plaintiff(s):

Gregory Wick

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Adv#: 8:19-01202 Wick v. Guy Griffithe

#7.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]

Docket 3

Tentative Ruling:

Tentative for 1/16/20:

This is Defendant/Debtor, Guy Griffithe's ("Defendant's") motion to dismiss the complaint of Plaintiff/Creditor, Gregory Wick (Plaintiff). This tentative ruling was originally written for the *Samec v Griffithe* matter (19-01195) but the *Wick* complaint shares many of the same infirmities. Thus, a separate tentative ruling is unnecessary.

Plaintiff's complaint is styled such that he is essentially requesting a determination that Defendant's conduct, if proven, would constitute non-a dischargeable debt pursuant to 11 U.S.C. §523(a)(2)(A) [actual fraud] and (a) (4) [defalcation while acting in fiduciary capacity, embezzlement or larceny]. It is not clear whether Plaintiff intends to have the case tried in this court or in state court, and there is a question of abstention but not before the court at this moment.

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

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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 enough 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.*

2. Alleged Facts

Plaintiff in his complaint alleges that, in exchange for a 90-day loan from Plaintiff in the amount of \$100,000, Defendant signed a promissory note on March 30, 2017 on behalf of Bridgegate Picture Corp. ("Bridgegate") and signed also as a personal guarantor. The promissory note was delivered by Plaintiff's then financial advisor, Maartin Rossouw ("Rossouw"). Plaintiff claims that Rossouw acted as a dual agent for both Plaintiff and Defendant. When debt on the promissory note became due, Plaintiff attempted to collect through Rossouw, but to no avail. This went on for several months. To date, Plaintiff has received only \$25,000, but apparently received other checks returned for insufficient funds. It is noteworthy what the complaint does not contain. There are few if any alleged representations attributed to the Defendant, or even to Rossouw. In short, very little is given that would separate this case from a simple breach of contract case. It should come as

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no surprise that all bankruptcies are filled with breach of contract claims, and it is only those few where the debt was procured through one or more of the "bad acts" described in §523(a) that discharge is correctly challenged.

3. Plaintiff's Claim Under §523(a)(2)(A)

Plaintiff claims that Defendant's alleged misconduct requires a finding that the debt he has incurred with respect to the unpaid loan is not dischargeable pursuant to §523(a)(2)(A). To establish a claim under §523(a)(2)(A), a plaintiff must establish: (1) a representation of fact by the debtor; (2) that was material; (3) that the debtor knew at the time to be false; (4) that the debtor made with the intention of deceiving the creditor; (5) upon which the creditor relied; (6) and that the creditor's reliance was reasonable; (7) that damage proximately resulted from the misrepresentation. See *Rubin v. West (In re Rubin)*, 875 F.2d 755, 759 (9th Cir. 1989); see also, *Britton v. Price (In re Britton)*, 950 F.2d 602, 604 (9th Cir. 1991). A claim under this "fraud" exception requires that the claim satisfy the heightened pleading requirements for fraud pursuant to F.R.C.P. 9(b). See *In re Jacobs*, 403 B.R. 565, 574 (Bankr. N. D. Ill. 2009) (citations omitted).

F.R.C.P. 9(b) and F.R.B.P. 7009 provide: "In alleging fraud, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." While intent or knowledge may be averred generally, however, the plaintiff must still plead the events claimed to give rise to an inference of intent or knowledge *Devaney v. Chester*, 813 F.2d 566, 568 (2d Cir. 1987), which may be accomplished by pleading facts consistent with certain well established "badges of fraud." *In re Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2004).

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Here, Plaintiff in his complaint alleges that at the time of the loan, Defendant knew that Bridgegate was severely undercapitalized and did not have the resources to fulfill the terms of the promissory note or Defendant's personal guarantee. Plaintiff alleges that Defendant has entered into similar agreements with other investors, and that those promissory notes too are in default. Plaintiff alleges that he detrimentally relied on Defendant's personal guarantee of the loan in making his decision and that had he known Bridgegate's true financial condition, he would never have invested. As a result of Defendant's default, which Plaintiff argues was intentional, Plaintiff has been damaged in an amount not less than the remaining balance of the loan.

But, are the facts alleged in Plaintiff's complaint, taken as true, even close to meeting the minimal pleading standards set forth above? No allegation is made that Defendant represented anything to Plaintiff, whether about his own financial position, that of Bridgegate, or otherwise. There is no specific allegation that Rossouw made representations either. As *Iqbal* and *Twombly* make clear, there must be enough *factual* detail to support a claim under §523(a)(2)(A), especially given the heightened pleading standards under Rule 9(b). Merely reciting the elements of fraud is insufficient; there must be corresponding facts alleged supporting each of the elements. What was said, by whom, when, etc. Was it oral or in writing?

Surely, not every promissory note supported by a personal guarantee amounts to fraud, false pretenses, or intentional misrepresentation when the promisor and guarantor cannot fulfill those obligations. Even considering the other notes allegedly made to other investors on similar terms, the court remains unpersuaded that fraudulent conduct has been pled with enough specificity for Rule 9. Even shaky borrowers are entitled to borrow money, and eventual default does not necessarily mean this was a foregone

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conclusion. In opposition to this motion, Plaintiff argues that Defendant has had over 20 lawsuits filed against him for nonpayment of debt going back over a decade. Unfortunately, this was not raised in the actual complaint. Moreover, we cannot rely on mere inference. While widespread and prolonged giving of bad promissory notes *might* suggest that the issuer was making them intentionally without the ability or inclination to repay, all the specifics need to be provided and Plaintiff must be able to allege specifically that these were an intentional device to obtain funds under false pretenses. The Complaint as it stands is very short of this standard.

4. Plaintiff's Claim Under §523(a)(4)

11 U.S.C. § 523(a)(4) provides an exception to discharge "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny[.]"

Here, Plaintiff alleges that Defendant, as President of Bridgegate, owed fiduciary duties to his investors, including Plaintiff. Plaintiff then alleges that Defendant breached those duties by:

- (1) failing to honor the personal guarantee;
- (2) failing to pay the note by the dates set forth in the note;
- (3) failing to pay court costs;
- (4) failing to pay late fees;
- (5) misrepresenting the financial status of the company;
- (6) Engaging in criminal activity, which put the company in peril;
- (7) Gross mismanagement;
- (8) Theft and conversion of company assets;

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(9) failure to disclose money to Plaintiff, which he was entitled to receive;

(10) Diverting assets so as to put them beyond the reach of Plaintiff;

(11) Paying himself excessive and/or non-disclosed salaries.

This is quite a list. But unfortunately, like the first claim for relief, this one suffers from the same lack of detailed factual allegations enough to satisfy the heightened pleading requirements under Rule 9(b). The above listed allegations appear to be nothing more than legal conclusions that are either insufficiently supported or not supported at all by the facts as alleged. For example, it is not at all clear how or why Plaintiff regards himself as an "investor" rather than merely a lender. A factual example for each of the 11 subparts would also add some substance to the complaint and possibly supply some support for the necessary allegation that Defendant was as to Plaintiff a fiduciary. Merely being a lender does not alone create a fiduciary relationship. It is also not clear whether Plaintiff is alleging embezzlement and/or larceny in the Complaint. In short, this cause of action is not supported by enough facts to state a claim that is plausible on its face.

The court notes that Plaintiff is proceeding *in pro se* and encourages Plaintiff to retain counsel. The Complaint involves issues that can be quite subtle and more complex than they may seem to a lay person. This is especially true when the opponent is represented by counsel. The court also notes that Plaintiff is a plaintiff, along with his wife, in another adversary proceeding involving some of the same issues. Retaining counsel could be of significant benefit to Plaintiff. Thus, since the Ninth Circuit has routinely held that leave to amend should be liberally granted, so it will be in this case. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

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5. Jurisdiction Issue

The Reply also curiously argues that the court does not have jurisdiction over this adversary proceeding because the debt at issue was incurred in connection with a cannabis business. The court needs clarification on whether Bridgegate Picture Corp. is a cannabis concern or, as its name would suggest, a motion picture company, or the like. The court is aware that the other adversary proceedings do relate to loans made primarily for investment in a cannabis business, including one adversary proceeding where Mr. Samec is also a Plaintiff (along with his wife), which adds a layer of confusion that requires clarification.

Grant with leave to amend

Status conference travel together with same.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Gregory Wick

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:20-10143 Bridgemark Corporation

Chapter 11

#1.00 Emergency Motion Of Debtor For An Order Authorizing The Debtor To (I) Pay And/Or Honor Prepetition Wages, Salaries, Employee Benefits, And Other Compensation; (II) Remit Withholding Obligations; And (III) Maintain Employee Compensation And Benefits Programs And Pay Related Administrative Obligations

Docket 4

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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8:20-10143 Bridgemark Corporation

Chapter 11

#2.00 Emergency Motion Of Debtor For An Order Authorizing (A) Maintenance Of Existing Bank Accounts, (B) Continuance of Existing Cash Management System, Bank Accounts, Checks, And (C) Related Relief

Docket 5

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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8:20-10143 Bridgemark Corporation

Chapter 11

#3.00 Emergency Motion By Debtor For Order Pursuant To 11 U.S.C. §§ 105(a) And 366; (I) Prohibiting Utility Companies from Altering, Refusing, Or Discontinuing Service, (II) Determining Adequate Assurance Of Payment For Future Utility Services, And (III) Establishing Procedures For Determining Adequate Assurance Of Payment

Docket 6

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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8:20-10143 Bridgemark Corporation

Chapter 11

#4.00 Emergency Motion For Order Authorizing The Payment Of Working Interest Expenditures, Joint Interest Billings, Royalty Payments And Net Profit Interest;

Docket 7

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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8:19-10012 Luciana C. Ice

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK
Vs
DEBTOR

Docket 29

Tentative Ruling:

Grant unless APO.

Party Information

Debtor(s):

Luciana C. Ice

Represented By
Rabin J Pournazarian

Movant(s):

WELLS FARGO BANK

Represented By
Sean C Ferry
Eric P Enciso

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-11249 Delia Banuelos De Castillo

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK
Vs.
DEBTOR

Docket 38

Tentative Ruling:

Grant unless lender confirms debtor is current or APO.

Party Information

Debtor(s):

Delia Banuelos De Castillo

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, National

Represented By
Kirsten Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-11575 Brent M Giddens

Chapter 11

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

Docket 60

Tentative Ruling:

Grant. To the extent the opposition seeks leave to commence levies on estate property absent further order, it is overruled.

Party Information

Debtor(s):

Brent M Giddens

Represented By
Andrew P Altholz

Movant(s):

Brent M Giddens

Represented By
Andrew P Altholz
Andrew P Altholz

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8:18-14602 Susan D Aronson

Chapter 7

#4.00 Motion for Disallowance or Surcharge of Debtor's Amended Homestead Exemption

Docket 62

Tentative Ruling:

This is the Trustee's motion for disallowance of, or surcharge upon Debtor's amended homestead exemption under a theory of equitable estoppel. The motion is opposed by Debtor, Susan D. Aronson (Debtor).

1. Facts

The following does not appear to be disputed. Debtor is in her mid-60s and has been without a source of significant income for at least the past 4 years. Her primary income is currently is from food stamps. Before the current bankruptcy case, Debtor had filed 3 prior Chapter 13 bankruptcies, all of which were dismissed. The three prior bankruptcies were apparently filed to stop foreclosure on her property. The current case was filed approximately two months after the third bankruptcy case was dismissed.

In the current case the Debtor took a different tack. First, she filed under Chapter 7, a liquidation, rather than a reorganization. Second, she listed the property commonly known as 27382 Capricho, Mission Viejo, CA ("property").and claimed a \$75,000 homestead exemption under Cal. Civ. Pro. Code § 704.730 (as she had in the two prior filings in which schedules were filed) but filed a Statement of Intention indicating her intent to surrender the Property. On paper, the Debtor's struggle to retain the property appeared at an end. The good news was that there appeared to be decent amount of equity in the property.

Trustee broadcast her intent to sell the property. However, Trustee's attempts to sell the property were routinely frustrated by Debtor herself who argued that a sale of her home would render her effectively homeless, putting her very life in jeopardy.

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To allay these concerns, Trustee and her real estate agent made arrangements to assist Debtor with the transition out of her home into a new living situation. Debtor again stubbornly refused to cooperate despite accepting the money the real estate agent advanced her against her homestead exemption. When the trustee and real estate agent finally prevailed upon her to vacate her home, through use of the Marshal service, the home was in complete disarray. There was no water service and there was evidence that the home had a major rodent infestation. In short, the home was not in marketable condition without significant work, which the trustee sanctioned in order to sell the property.

After all of that was done, on September 2, 2019, the Debtor filed an Amended Schedule C in which she increased her homestead exemption under Cal. Civ. Pro. Code § 704.730 to \$175,000. The only ground for a \$175,000 exemption that could apply here is § 704.730(a)(3)(C), since she is "[a] person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000)..." The applicability of this statute does not appear to be contested.

The property has since been sold. Trustee asserts that with all applicable deductions considered, Trustee has a net of \$108,310.58 from the sale. However, if Debtor's increase in her homestead exemption stands, then the Estate will be left with a mere \$8,310.58. This will leave unpaid administrative expenses in the amount of approximately \$78,000, much of which is owed to Trustee and to her counsel. There is a relatively small creditor body here, with only two claims remaining of about \$50,561.71 in aggregate.

2. Estoppel Or Disallowance/ Surcharge of Exemption

Two well-established axioms in bankruptcy are that exemptions are construed liberally in favor of debtors, and debtors may freely amend their claims of exemption. See FRBP 1009(a).

The United States Supreme Court in *Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188 (2014) reset the boundaries. Earlier case law had relied on 11 U.S.C. § 105(a)

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and/or on the bankruptcy court's "inherent power" to curb abuse and to find grounds to "surcharge" and/or disallow exemptions based upon debtor misconduct and/or trustee reliance. See e.g. *Latman v. Burdette*, 366 F.3d 774, 785 (9th Cir. 2004) ["The surcharge remedy simply ensured that Latmans retained the full value, but no more than the full value, of their permitted exemptions."]; *In re Onubah*, 375 B.R. 549, 556 (9th Cir. BAP 2007) ["While we agree that the purpose of a surcharge cannot be the punishment of a debtor, the surcharge in this case was not meted out to punish Onubah. Consistent with *Latman*, the surcharge was calculated to compensate the estate for the actual damage inflicted by Onubah's misconduct."]

In *Law v. Siegel*, the Chapter 7 trustee incurred attorney's fees of over \$500,000 to establish that a trust deed recorded against the property by the debtor was a sham, to give the appearance of a lack of equity. The trustee then sought to "surcharge" the debtor's \$75,000 homestead exemption to offset those expenses. The bankruptcy court, Bankruptcy Appellate Panel, and Ninth Circuit all ruled in the trustee's favor. But the Supreme Court reversed. The Court invoked 11 U.S.C. § 522(k), which states that debtors' exemptions are "not liable for payment of any administrative expense." The Supreme Court saw no textual basis to exclude misconduct-related administrative expense from § 522(k), noting that § 105(a) cannot be used to override explicit statutory provisions, and cannot confer authority to take actions that the Code prohibits.

Although the exemption was not at the heart of *Law v. Siegel*, the Supreme Court considered case law involving requests for the disallowance of amended exemption claims in its analysis on the basis that they presented the same issue as a "surcharge" request. *Id.*, 571 U.S. at 425, 134 S. Ct. at 1196 ["Siegel points out that a handful of courts have claimed authority to disallow an exemption (or to bar a debtor from amending his schedules to claim an exemption, which is much the same thing) based on the debtor's fraudulent concealment of the asset alleged to be exempt."] See also *In re Gray*, 523 B.R. 170, 175 (9th Cir. BAP 2014) ("Thus, *Law v. Siegel* mandates the conclusion that the bankruptcy court is without federal authority to disallow the Amended Exemption or to deny leave to amend exemptions based on

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Debtors' bad faith."); *In re Elliott*, 523 B.R. 188, 189 (B.A.P. 9th Cir. 2014) ("We conclude that *Law v. Siegel*, — U.S. —, 134 S. Ct. 1188, 188 L.Ed.2d 146 (2014), has abrogated Ninth Circuit law such that unless statutory power exists to do so, a bankruptcy court may not deny a debtor's exemption claim or bar a debtor's exemption claim amendment on the basis of bad faith or of prejudice to creditors.")]

But the question remains: is there a statutory basis for doing so, such as California's definition of equitable estoppel? In *In re Lua*, 692 Fed. Appx. 851 (9th Cir. 2017), the debtor amended to claim a homestead exemption under Cal. Civ. Pro. Code § 704.730(a)(1) (after amending to remove the exemption which had been claimed on her original schedules) after the trustee had prosecuted an extended adversary proceeding to establish the estate's interest in the property, and had moved forward with the sale of the property. The Ninth Circuit reversed the District Court's disallowance of the exemption. The reasoning of the District court, though it was overruled, might still be of use in this case.

The *Lua* District Court analyzed the applicability of equitable estoppel to limit the California exemption, stating: "[t]o invoke equitable estoppel under California law, a party must show: '(a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it.' *Simmons v. Ghaderi*, 44 Cal.4th 570, 584, (2008)." *In re Lua*, 551 B.R. 448, 453 (C.D. Cal. 2015). Each element was resolved in favor of the trustee. The District Court stated in summary: "[i]t cannot be disputed that the Debtor did not deal fairly with the Trustee. She remained silent for three years despite knowing that the Trustee was pursuing the Property in an attempt to compensate creditors, then amended her schedules at the last minute to nullify the Trustee's significant efforts and reap a windfall for herself and the marital community." *Id.* at 455.

The Ninth Circuit in *Lua* did not dispute the applicability of equitable estoppel to the limitation of exemptions under California law, and did not dispute the elements, as recited by the District Court. But the Circuit Court took exception with the District

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Court's application of the elements on the facts of the case. First, the court stated that the amended schedules eliminating the exemption "cannot form the basis of an estoppel because they set forth all of the existing facts known to Lua." 692 Fed. Appx. at 852. Second, the trustee "should have known, that in the event circumstances changed, Lua could amend her exemptions". *Id.*

In a dissenting opinion, which sounds a lot like our case, Judge Callahan stated:

"While it is true that Lua did not know her exact interest in the home at the time she filed her first amended schedules and that Lua never affirmatively stated she would not change her amended exemption election at a later time, Lua stood idly by as the Trustee toiled away, failing to give the Trustee even so much as an indication that she was contemplating claiming the homestead exemption. In light of these particular facts, I cannot say that the bankruptcy court abused its discretion in finding that this case's equities favored not allowing Lua to amend her first amended schedules." *Id.* at 853.

3. Equitable Estoppel in This Case

So, *Lua* stands for the proposition that equitable estoppel, on certain facts, can limit a debtor's power to amend exemptions at the expense of the estate. Trustee argues that in this case, all the required elements of equitable estoppel are present:

- **Representation of Material Facts** – Trustee asserts that this element is satisfied because Debtor claimed the same exemption (\$75,000 under Cal. Civ. Pro. Code § 704.730(a)(1)) in three separate bankruptcy cases. She reiterated the amount of the exemption numerous times in several contexts, including her own motion seeking the imposition of the automatic stay, and her opposition to Trustee's Turnover Motion. Thus, Trustee concludes that Debtor had been

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concealing her intent to increase her exemption by the amendment.

- **Made with knowledge, actual or virtual, of the facts** – Trustee argues that this element is satisfied because Debtor was certainly aware of her age and her income status. Trustee also asserts that the amendment was not in response to any specific changed circumstance of the case. Rather, claiming the lower exemption was a strategy to convey the illusion that gainful employment was in prospect.
- **To a party ignorant, actually and permissibly, of the truth** – Trustee argues that since the higher homestead exemption had never been claimed in any of Debtor’s three prior filings, this is evidence that there had always been a strategic reason for the Debtor not to claim the higher exemption: she has maintained throughout all three cases that she is on the verge of receiving income, necessary in the prior Chapter 13 cases to support a Plan, and necessary in this case to justify her continuing hope that she could purchase the equity in the Property. Trustee argues that she had no reason to believe Debtor would, suddenly, adjust her homestead exemption so drastically after eviction and after Trustee and her real estate agent had gone out of their way to ease Debtor’s transition to a new living situation.
- **With the intention, actual or virtual, that the ignorant party act on it** – Trustee asserts that Debtor intended for Trustee to rely on the original \$75,000 homestead exemption. In support of this argument, Trustee asserts that Debtor’s argument in resisting turnover of the Property to Trustee was that there was significant equity in the Property, such that any delay impacted only her surplus, not any creditor of the Estate. However, this was only true if Debtor maintained her original homestead exemption. That ceased to be the case once she increased the exemption. The original homestead exemption also was a key factor in Trustee’s real estate agent’s

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decision to advance her the money to facilitate her move-out.

- **That party was induced to act on it** – Trustee asserts that she relied on the original exemption claim and, in that reliance moved forward with administering the estate. Trustee argues that had she known earlier in the case that Debtor intended to increase her exemption, Trustee would likely not have voluntarily incurred out-of-pocket expenses and attorney’s fees in her disputes with Debtor. In fact, Trustee would not have administered the property at all.

Trustee argues that the foregoing gives the court cause to invoke the doctrine of equitable estoppel, or at least to surcharge the exemption with the costs of administration resulting from Trustee’s unfortunate reliance on Debtor’s representations. Trustee asserts that Debtor’s conduct amounted to a ‘bait and switch.’ Trustee does not have any issue with Debtor still claiming her original \$75,000 homestead exemption. Debtor further argues that *Lua* actually strengthens Debtor’s position. Primarily, Debtor argues that, like in *Lua*, the Trustee must have been aware that Debtor could properly amend her schedules at any time, including increasing her asserted homestead exemption. Debtor also notes that Trustee does not challenge Debtor’s right to do this.

Debtor points out that she did not make any affirmative representation that the \$75,000 homestead exemption was set in stone. Debtor points out that Trustee could have asked Debtor to stipulate to that amount but chose not to do so. In any case, Debtor argues that Trustee has not shown how the amended exemption materially affects the case. Trustee was still able to liquidate the property. As to the advancing of funds against her exemption, Debtor argues that the money very likely would have been advanced to Debtor even if the homestead exemption had been larger at the time. The reason is that Debtor needed the money at that moment to facilitate her move-out and transition. The amount of her exemption would not have changed that. The real estate agent will still be reimbursed for advancing the funds, so he is no worse off. Debtor next argues that there is no evidence that the increased homestead exemption has impaired the administration of the estate or harmed any creditors. Debtor notes

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there are still judgment liens attached to the property that could be avoided to the extent that they impair her exemption. However, Debtor argues that this is something of a moving target that requires resolution of the equitable estoppel theory.

Debtor argues there is nothing in *Law v. Siegel* that allows a common law authority to abrogate Title 11. While Trustee's use of equitable estoppel is derived from a California statute, Evidence Code § 623, i.e. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it", this is merely codification of common law, and not the sort of statutory provision mentioned as a possible except in *Law v. Siegel*. Although *Law v. Siegel* no longer allows the bankruptcy court to deny a debtor's claimed exemption based on bad faith conduct or prejudice to creditors under vague equitable principles as found under §105, the Supreme Court has held that a "valid statutory basis" is sufficient grounds to deny a debtor's homestead exempt." *Elliot v. Weil* 523 B.R. 188, 189 (9th Cir. BAP 2014). From this, Debtor argues that the use of equitable estoppel, a common law principle from the California Rules of Evidence, should not trump what by statute Congress has expressly provided, i.e. that the Debtor has a right to amend the petition at any time before the case is closed. F.R.B.P. 1009(a). Finally, in response to Trustee's assertion that Debtor's conduct is tantamount to making a mockery of the bankruptcy process and that her stubborn unwillingness to cooperate throughout the process should not be rewarded, Debtor notes that she is destitute, living off of food stamps, and suffered a traumatic brain injury as a result from a car accident some years ago.

4. Amended Homestead Exemption Should Stand

Trustee's exasperation is understandable. The job of a trustee is often marked by difficulties and disappointment. The Debtor's behavior in this case is questionable, put charitably. There's an adage about "biting the hand that feeds you..." that comes to mind "or is it the Al Wilson song about the tender-hearted woman and the snake?

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Or is it "no good deed goes unpunished"? This court may even have reservations about the wisdom of *Law v. Siegel* in the first place. But this court has little choice but to implement what the Code provides as interpreted by the highest court in the land. Debtor does have the right to amend her schedules when she sees fit, and Trustee does not dispute this point. Trustee also does not dispute that Debtor qualifies for the higher homestead exemption.

While the court is not persuaded that the doctrine of equitable estoppel is categorically inapplicable to bankruptcy cases, the court is also not persuaded that there is sufficient evidence in this record that would amount to an affirmative representation that Debtor would not amend her schedules and take the higher exemption. In *Lua*, the court noted that a 'change in circumstances' is what likely led Debtor permissibly to amend her schedules. However, the definition of "change in circumstances" is somewhat vague and its application here even more so. Courts that have applied the doctrine of equitable estoppel seem to have relied on concrete evidence of affirmative statements by debtors that they would not seek to change their exemptions, creating estoppel in the trustee's favor. See *In re Gonzalez*, 2019 Bankr. LEXIS 962 *1, *75-77 (Bankr. C.D. Cal. Mar. 27, 2019) ("Debtor testified under oath at the continued meeting of creditors... that his statements on his original and amended bankruptcy schedules were true and correct, including his claim of the personal property exemptions under C.C.P. § 703.140(b), even though Trustee advised Debtor that he could use either the personal property exemptions under the bankruptcy-like exemptions of C.C.P. § 703.140(b) or the alternative exemptions, including a homestead exemption, under regular California non-bankruptcy exemptions of C.C.P. § 704, but not both.")

Here, Trustee argues, there was no such change in circumstances for Debtor. However, as Debtor seems to argue, her realization that she would not be able to continue earning a living to support herself could also possibly be interpreted as a change of circumstances from earlier in the case and from her prior petitions. As noted, Debtor suffers from a brain injury, and as such, a 'change in circumstances'

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might be cast in a different light. Also, considering Debtor's prior bankruptcies, which were apparently filed to ward off foreclosure proceedings, the reality and finality of losing her house might be interpreted as a 'change in circumstances.' In short, that Debtor made an affirmative representation to Trustee regarding her homestead exemption that would support a finding of estoppel appears here to be too speculative. Trustee appears to have done diligent work in administering this case, and she and her real estate agent showed admirable compassion for Debtor. However, the hard facts after *Law v. Siegel* are that Debtor can amend her schedules essentially at any time prior to the closing of the case, and that Trustee must have understood that was a possibility from the outset undercutting estoppel, as in *Lua*. Further, Trustee's arguments that Debtor made material misrepresentations as to her intent to only claim the \$75,000 exemption is far too vague and amorphous to be convincing, especially given Debtor's many personal difficulties. The takeaway from the perspective of trustees is there is no substitute for a written waiver agreement, or similar, that will provide a clear foundation for estoppel or other basis for enforcement if breached.

Deny

Party Information

Debtor(s):

Susan D Aronson

Represented By
Anerio V Altman

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

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8:19-13846 Roger Scott Kraft

Chapter 7

#5.00 Debtor's Motion To Be Granted Automobile Title And Outright Ownership

Docket 11

Tentative Ruling:

Deny. If the value is really as low as \$200 the court needs better evidence than presented here.

Party Information

Debtor(s):

Roger Scott Kraft

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, January 21, 2020

Hearing Room 5B

11:00 AM

8:09-22699 Cheri Fu and Thomas Fu (Deceased)

Chapter 7

#6.00 Application for Payment Of: Interim Fees and/or Expenses
Period: 11/15/2015 to 12/30/2019

**HINDS & SHANKMAN, LLP, SPECIAL LITIGATION COUNSEL FOR
CHAPTER 7 TRUSTEE**

FEE:	\$25,000.00
EXPENSES:	\$0.00

Docket 837

Tentative Ruling:

Allowed as prayed. Appearance is optional.

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

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

Tuesday, January 21, 2020

Hearing Room 5B

11:00 AM

CONT... Cheri Fu and Thomas Fu (Deceased)

Chapter 7

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

Tuesday, January 21, 2020

Hearing Room 5B

11:00 AM

8:15-14135 Scott Edward Trumbo

Chapter 7

#7.00 Amended Trustee's Final Report And Application For Compensation:

JEFFREY I. GOLDEN, TRUSTEE

MARGULIES FAITH LLP, ATTORNEY FOR TRUSTEE

GROBSTEIN TEEPLE LLP, ACCOUNTANT FOR TRUSTEE

FRANCHISE TAX BOARD, ADMINISTRATIVE TAX EXPENSES

Docket 89

Tentative Ruling:

Allowed as prayed. Appearance is optional.

Party Information

Debtor(s):

Scott Edward Trumbo

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeremy Faith
Meghann A Triplett

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

Tuesday, January 21, 2020

Hearing Room 5B

11:00 AM

8:18-14491 Fernando Pineda Garcia and Patricia Pineda

Chapter 7

#8.00 Trustee's Final Report And Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

Docket 41

Tentative Ruling:

Allowed as prayed. Appearance is optional.

Party Information

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

Tuesday, January 21, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#9.00 Fourth Omnibus Objection to Secured Tax Claims:

Claim No. 71	Tulare County Tax Collector
Claim No. 193	Prince George's County, Maryland
Claim No. 194	Prince George's County, Maryland
Claim No. 289	Cabarrus County Tax
Claim No. 468	Sonoma County Tax Collector
Claim No. 1356	Prince George's County, Maryland
Claim No.. 1357	Prince George's County, Maryland
Claim No. 1420	City of Burlington
Claim No. 1490 District	Goose Creek Consolidated ISD & Lee College
Claim No. 1495	Cameron County
Claim No. 1498	Bossier Parish Sheriff's Office
Claim No. 1508	Coweta County Tax Commissioner
Claim No. 1526	Clark County Assessor
Claim No. 1539	City of Richmond
Claim No. 1554	Webb County Tax Assessor
Claim No. 1577-2	Tulare County Tax Collector

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

Tuesday, January 21, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Claim No. 1596

City of Baytown, Texas

Docket 2598

Tentative Ruling:

Sustained

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
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, January 21, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:17-13089 Cypress Urgent Care, Inc.

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 306

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT
DEBTORS' CASE UNDER 11 USC SECTION 1112(b) FILED 12-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

#2.00 Motion by United States Trustee to Convert Case to Chapter 7 or Dismiss Pursuant to 11 U.S.C. Section 1112(b)

Docket 31

Tentative Ruling:

Tentative for 1/22/20:

The court will determine whether, based on timely MORs, there is enough regular income to support a plan. Failure to demonstrate this ability, or any further delinquency on filing of MORs, will likely result in granting the motion.

Continue for 60-75 days per Trustee's suggestion.

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

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, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

**#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual
(cont'd from 1-08-19)**

Docket 1

Tentative Ruling:

Tentative for 1/22/20:
Continue to coincide with UST's motion.

Tentative for 1/8/20:
Continue to January 22, 2020 to coincide with dismissal/conversion motion.

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

Wednesday, January 22, 2020

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 12-11-19)

Docket 106

Tentative Ruling:

Tentative for 1/22/20:
Grant conversion. See #6.

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,

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

CONT... M3Live Bar & Grill, Inc.

Chapter 11

2020. The court is inclined to continue the hearing to coincide.

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.

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, January 22, 2020

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
(cont'd from 12-11-19)

Docket 138

Tentative Ruling:

Tentative for 1/22/20:

See #6. Debtor is attempting to sell substantially all assets, which makes this version of a plan a non-sequitur.

Continue or take off calendar as seems appropriate.

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 doesnot 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.

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, January 22, 2020

Hearing Room

5B

10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 11

#6.00 Motion For Order: (1) Authorizing Sale Of Debtors Leased Property Free And Clear Of All Liens; (2) Authorizing Assignment Of The Estates Interest In An Unexpired Lease Pursuant To 11 U.S.C. §365(f); (3) Authorizing And Approving Sale Overbid Procedures Pursuant To 11 U.S.C. § 363(b); (4) Approving The Sale Free And Clear Of Liens And Other Interests Pursuant To 11 U.S.C. § 363(f); (5) Finding Buyer Is A Good Faith Purchaser; And (6) Waiving The 14-Day Stays Of FRBP 6004(h) and 6006(d)

Docket 150

Tentative Ruling:

Tentative for 1/22/20:

This is the motion of debtor under §363(f) to sell substantially all assets of the estate free of liens to Grand Theater, Inc., an entity owned and controlled by Musa Madain, the principal of the debtor. The assets to be sold consist primarily of the leasehold (about 25 years left), with personal property therein, commonly known as 2232 S. Harbor Blvd., Anaheim, CA. The property is operated as an events center. The proposed price is \$1 million cash plus assumption by the buyer or waiver of six enumerated creditors of an aggregate of about another \$1 million, but of which \$631,590 is held by Mr. Madain. Debtor admits that valuation of the noncash portion of the bid will take further analysis, but in other places Debtor alleges the total value is \$2 million. From the cash portion of the price about \$420,000 is proposed to be paid to secured claims, although the accurate amount of aggregate secured claims may be much higher as, for example, the County of Orange's claim alone is \$395,040. The price is made subject to overbids in the proposed initial minimum amount of \$100,000 (initial bid \$1,100,000) to be followed by subsequent overbids of at least \$10,000, but to qualify as an overbidder \$200,000 must first be paid care of Debtor's counsel.

The proposed sale is opposed by Fariborz Wosoughkia, a creditor for about \$95,000 and a 30% shareholder and by the California Department of

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

Wednesday, January 22, 2020

Hearing Room

5B

10:00 AM

CONT... M3Live Bar & Grill, Inc.

Chapter 11

Tax and Fee Administration owed around \$418,130. The arguments are primarily to the effect that the sale to an insider merits closer scrutiny and that the price is too low, or at least the marketing efforts over the holidays were inadequate. Mr. Wosoughkia adds to the effect that Mr. Madain is a fraud, and this is just another in a long parade of such frauds.

The U.S. Trustee has not formally opposed the sale but has his own motion to dismiss or convert already on calendar as #4 which has been continued twice since October 30, 2019. That motion is based primarily on a continuing list of monthly operating losses as reported in the MORs.

Debtor is correct that a sale to an insider is not *per se* improper. See *Mission Prod. Holdings v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (1st Cir. BAP 2016). But it is also true that sales to insiders are always subject to a heightened level of scrutiny since the opportunity for malfeasance is higher. See e.g. *In re Roussos*, 541 B.R. 721, 730 (Bankr. C.D. Cal. 2015). In this respect the court's primary disappointment is in the level of marketing. The Debtor argues that it corresponded with all "persons known to have a potential interest in Debtor and Debtor's property." Goe Declaration ¶. But "known to whom"? While somewhat unclear, this group of self-selected recipients seems primarily to be the existing shareholders. Other potential buyers, Gotham Assets and a Delaware bankruptcy attorney for one Daniel Dokhanian, are also mentioned. Perhaps not surprisingly, nothing came of these inquiries as most seemed only interested in acquiring the fee interest, not a lease. But conspicuously lacking is any systematic sales effort. No mention is made either of advertisement or of any broker being hired. So, we really don't know whether an earnest marketing effort was made. As the *Roussos* court observes, this is fatal where the winning buyer ends up being the principal of the debtor because the insider frequently has counter incentives to those of the creditor body, i.e. a lower price, not a higher one, and less marketing not more. *Id.* at 730. On this record the court cannot make a finding that optimal value was obtained, and it is little comfort to know that this sale is made subject to overbids when one has no means for

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

CONT... M3Live Bar & Grill, Inc.

Chapter 11

knowing how wide an audience was sought.

Debtor argues that loss of a sale for \$1 million would be a tragedy, and that might be so. But the court may have a remedy at hand. The United States Trustee's motion to convert is also on calendar. If granted this would have the effect of placing a fiduciary in charge immediately. That fiduciary can quickly evaluate whether a more vigorous sales effort is warranted, and/or whether the existing offer from Mr. Madain deserves a further look. If an operating order to preserve value is needed while such a systematic sales effort is made, it should be available for the asking.

Continue motion for evaluation by appointed Chapter 7 trustee.

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, January 22, 2020

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#7.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 9-25-19)**

Docket 1

Tentative Ruling:

Tentative for 1/22/20:
Continue to April 8, 2020 at 10:00 a.m. Appearance waived.

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:

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

CONT... Vitargo Global Sciences, Inc.

Chapter 11

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.

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:

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

CONT... Vitargo Global Sciences, Inc.

Chapter 11

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
Aram Ordubegian
Christopher K.S. Wong

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-13584 Coastal International, Inc.

Chapter 11

**#8.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 10-23-19)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE HAS BEEN
TRANSFERRED TO NORTHERN DISTRICT OF CALIFORNIA 12-30-19**

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.

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, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-13639 Luong Quoc Nguyen and Loan Thi Tran

Chapter 11

#9.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Individual.
(cont'd from 10-23-19)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - FINAL ORDER
DISMISSING CHAPTER 11 CASE WITH A BAR TO RE-FILING AND
APPROVING STIPULATION THEREON ENTERED 12-11-19**

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.

Party Information

Debtor(s):

Luong Quoc Nguyen

Represented By
Kevin Tang

Joint Debtor(s):

Loan Thi Tran

Represented By
Kevin Tang

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#10.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual. Inc.

Docket 1

Tentative Ruling:

Tentative for 1/22/20:

Deadline for filing plan and disclosure statement: October 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: March 1, 2020.

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
Courtroom 5B Calendar**

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#11.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363 (cont'd from 12-30-19)

Docket 7

Tentative Ruling:

Tentative for 1/22/20:
Continue same terms until April 8, 2020 at 10:00 a.m.

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
Courtroom 5B Calendar**

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#11.10 Debtor's Motion For An Order Authorizing Debtor to Pay Pre-Petition Claims Of Certain Critical Vendors Necessary for its Continued Operation (OST Signed 1-17-20)

Docket 33

Tentative Ruling:

Tentative for 1/22/20:
Per OST, opposition due at hearing.

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
Courtroom 5B Calendar**

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 11

#12.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.

Docket 1

Tentative Ruling:

Tentative for 1/22/20:

Why no status report? Continue to February 5, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:18-10370 John J Trejo and Elsie Alfeche Baclayon

Chapter 11

#13.00 Motion to Dismiss Debtor Pursuant To 11 U.S.C. §1112(B)

Docket 157

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOTION BY UNITED STATES TRUSTEE TO DISMISS
CASE PURSUANT TO 11 USC SECTION 1112(b) FILED 1-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John J Trejo

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Elsie Alfeche Baclayon

Represented By
Michael Jones
Sara Tidd

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

Wednesday, January 22, 2020

Hearing Room 5B

10:00 AM

8:19-11575 Brent M Giddens

Chapter 11

#14.00 Objection to Claim Number 8 By Claimant Kara Salmonson

Docket 58

Tentative Ruling:

Tentative for 1/22/20:
Will execute amended order.

Party Information

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**

Thursday, January 23, 2020

Hearing Room 5B

10:00 AM

8:18-12723 Sohayl Khusravi

Chapter 7

Adv#: 8:18-01200 Hudson Insurance Company v. Khusravi et al

**#1.00 STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt
(con't from 12-12-19)**

Docket 1

Tentative Ruling:

Tentative for 1/23/2020:
Where the the default and prove up?

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.

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

Thursday, January 23, 2020

Hearing Room

5B

10:00 AM

CONT... **Sohayl Khusravi**

Chapter 7

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

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 23, 2020

Hearing Room 5B

10:00 AM

8:19-13164 Marc Wayne Wright

Chapter 7

Adv#: 8:19-01211 Alexander et al v. Wright

#2.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(6) of the Bankruptcy Code

Docket 1

Tentative Ruling:

Tentative for 1/23/2020:

Status conference continued to May 7, 2020 at 10:00 a.m. Court expect motion for summary judgment in meantime.

Party Information

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

Defendant(s):

Marc Wayne Wright

Pro Se

Plaintiff(s):

Zachary Alexander

Represented By
Thomas J Polis

Noah Wright

Represented By
Thomas J Polis

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, January 23, 2020

Hearing Room 5B

10:00 AM

8:12-23562 FusionBridge, Ltd.

Chapter 7

Adv#: 8:13-01342 Naylor (TR) v. Aarsvold et al

#3.00 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 2-28-19)

Docket 34

Tentative Ruling:

Tentative for 1/23/2020:

Is dismissal now appropriate?

Tentative for 2/28/19:

Why does this seem to be dragging? Either set for trial or dismiss.

Tentative for 8/23/18:

Continued to February 28, 2018 at 10:00 a.m. Appearance is not required.

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.

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,

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representing the value of the transferred assets. If the contention is that fraudulent transferors like Aarsvold don't get anything for their labors, or that they work for free, and therefore their efforts are simply added to the value of the transferred assets, that contention will have to be supported by some authority. But the court sees none.

The bulk of the Trustee's argument seems to be that the burden is on the defendants to prove the validity of deductions, and that defendant should be foreclosed from proving or even questioning any of this because some of the substantiating documentation of amounts paid other consultants than Aarsvold was not timely produced, or was not timely identified by Aarsvold in his deposition. Turning to FRCP 37(c)(1), the Trustee argues that any such evidence offered now should be stripped from the record as a sanction. But there are problems with this argument too. First, as discussed above, the court is not convinced that this is the defendants' burden or that the court can accept the Trustee's dubious premise (that the revenue can be produced or counted dollar for dollar without someone spending time as a deductible cost). But even if it were the defendants' burden, Rule 37(c)(1) is not by its terms absolute. Other alternative sanctions are enumerated in the Rule and the sanction is qualified if there is a showing that the omission was "substantially justified" or "harmless." While the court is not prepared to say that any of these omissions were justified, Mr. Negrete's prolonged and unexplained absence and the question raised in the papers whether the documents were given to him (but inexplicably not forwarded in discovery) make a strict application of the sanction unlikely, at least absent more explanation.

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:

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1. Introduction

This is Trustee's Motion for Summary Judgment to (1) avoid and recover fraudulent transfer, (2) for judgment that Defendant breached fiduciary duty, and (3) that Defendant is the alter ego of Debtor. The key issue in the fraudulent transfer claims is whether Defendant had the requisite intent to hinder, delay or defraud creditors. The undisputed facts indicate that he did. Prior to bankruptcy, Mr. Matthew Aarsvold ("Aarsvold") transferred substantially all of Debtor's assets to Fusionbridge Wyoming. He did this while litigation against Debtor was pending. There was no consideration given for the exchange. Although Aarsvold asserts that this transfer was intended to protect Debtor, he offers no documentary evidence or specific details to support his argument.

2. Statement of Facts

There is an extended history involving transfers of assets between Aarsvold's corporations and entities, in each case after creditors began to apply pressure. Back in 2005, Aarsvold owned Strategix, Ltd. ("Strategix") and ePassage, Inc. ("ePassage"). A lawsuit was filed in Orange County Superior Court and claims were asserted by Infocrossing West, Inc. and Infocrossing Services, Inc. (collectively, "Infocrossing") against Strategix, ePassage, and Aarsvold ("State Court Action"). See State Court Action's docket attached as Exhibit "10" to Wood Decl. Infocrossing obtained a preliminary injunction against Strategix, ePassage, and Aarsvold. *Id.* On August of 2005, Aarsvold filed paperwork to incorporate Debtor. See Wood Decl., Ex. "18." 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

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October of 2011, Aarsvold executed the APA as CEO of both Debtor and Fusionbridge Wyoming. Wood Decl., Ex. 2, pg. 49. Debtor and Fusionbridge Wyoming entered into an Asset Purchase Agreement ("APA") on October 29, 2011. Exhibit "2." Pursuant to the APA, substantially all of Debtor's assets were sold to Fusionbridge Wyoming. In exchange for these assets, Fusionbridge Wyoming agreed to pay approximately \$100,000 in Debtor's credit card debt. All of the assumed credit card debt had been personally guaranteed by Aarsvold. Why only these selected obligations were assumed is never explained in the opposition. The contracts that Fusionbridge Wyoming agreed to assume were customer contracts and the consulting agreements of Debtor's contractors that were performing the work required by the assumed customer contracts. Wood Decl., Ex. 2, pg. 40, § 1.4. Aarsvold signed the APA as "Chief Executive Officer" for both Debtor and Fusionbridge Wyoming. *Id.*, pg. 49.

On November 28, 2012 ("Petition Date"), Fusionbridge, Ltd. ("Fusionbridge California" or "Debtor") filed a Chapter 7 petition. Karen S. Naylor is the appointed Chapter 7 Trustee ("Trustee"). On January 2, 2013, Debtor filed its schedules and statement of financial affairs ("Schedules"). Pursuant to the Schedules, Debtor had assets valued at \$6.17 and liabilities totaling \$4,762,895.60 as of the Petition Date. See Wood Decl., Ex. 1, pg. 6-25. In Debtor's Statement of Financial Affairs ("SOFA"), Debtor disclosed a transfer of assets to Fusionbridge Wyoming. The SOFA states that Debtor received no value in connection with the transfer and that it had no relationship with the transferee, Fusionbridge Wyoming. *Id.*, at pg. 32. The Schedules 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

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Aarsvold; and (4) Conversion against both Fusion Wyoming and Aarsvold. On November 1, 2013, Trustee filed the Complaint, asserting claims against Fusionbridge Wyoming and Aarsvold. Wood Decl., Ex. "3."

A similar pattern continued even after this bankruptcy was filed. On January 10, 2014, Aarsvold's wife, Ms. Laurel Aarsvold, incorporated Glomad Services, Ltd. ("Glomad Services"). Wood Decl., Ex. "16." Sometime between January 10, 2014 and August 15, 2014, Aarsvold begins "shutting down" Fusionbridge Wyoming and starts working at 77 North Baker Inc. ("North Baker"), a company owned by Mrs. Aarsvold. Wood Decl., Ex "6" and "4." Between August 15, 2014 and December 12, 2014, North Baker begins shutting down. Mr. Aarsvold begins to work at Glomad Services where he performs the same services as he performed while working for Debtor. Wood Decl., Ex. 7, pg. 317:5-22.

3. Summary Judgment Standard

Trustee moves for summary judgment on the following claims. First, Trustee seeks a judgment on a matter of law that Defendants committed a fraudulent transfer (both actual and constructive fraud) pursuant to 11 U.S.C. §§ 544, 548(a)(1)(A), (a)(1)(B), 550, 551, and Cal. Civ. Code §§ 3439, et seq. Second, Trustee seeks a judgment that Aarsvold breached his fiduciary duties to Debtor. Third, Trustee seeks summary judgment that Aarsvold is the alter ego of both Debtor and Fusionbridge Wyoming. Fourth, Trustee seeks summary judgment dismissing all of Defendants' asserted 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

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notice when considering a motion for summary judgment. See *Insurance Co. of North America v. Hilton Hotels USA, Inc., et al.*, 908 F. Supp. 809 (D. Nev. 1995).

The party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). However once the moving party has carried its burden under Rule 56, its opponent must do more than show that there is some metaphysical doubt as to the material facts . . . the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Electric Industrial Co Ltd v. Zenith Radio Corp.*, 475 U.S. 574 (1986). In fact, if the factual context makes the nonmoving party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is a genuine issue of material fact. *Calhoun v. Liberty Northwest Ins. Corp.*, 789 F. Supp. 1540, 1545 (W.D. Wash. 1992) (citing *Matsushita Electric*, supra, at 538). A party cannot "rest upon the mere allegations or denials of his pleading" in opposing summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A self-serving declaration without evidence is not enough to show that there is a genuine issue of material fact. The Ninth Circuit has held that a "conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F. 3d 1168, 1171 (9th Cir. 1997). A declaration which contradicts earlier deposition testimony will also fail to create an issue of material fact. See *Andreini & Co., Inc. v. 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

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before the petition filing date; and (3) with actual intent to hinder, delay, or defraud present or future creditors.

In this case, Defendants do not dispute the claim that a transfer occurred two years before the Petition Date. The key issue here centers on the third element: whether Defendants had the actual intent to hinder, delay or defraud creditors. Whether a transfer has been made with actual intent to hinder, delay or defraud a creditor is a question of fact. *United States v. Tabor Court Realty Corp.*, F. 2d 1288, 1304 (3rd Cir. 1986). Courts generally infer fraudulent intent from the circumstances surrounding the transaction. *In re Acequia, Inc.*, 34 F. 3d 800, 805-806 (9th Cir. 1994). Courts look for "badges of fraud" that indicate fraudulent intent. *Id.* at 806. The traditional "badges of fraud" include:

- (1) The transfer of an obligation to an insider or other person with a special relationship with the debtor;
- (2) The debtor retained possession or control over the property after the transfer;
- (3) The transfer was not disclosed;
- (4) Actual or threatened litigation against the debtor at the time of the 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

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debtor;

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(10) The transfer occurred shortly after a substantial debt was incurred; and

(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

In re Acequia, Inc., 34 F. 3d at 806; see also Cal. Civ. Code § 3439.04(b)(1)-(11).
Fraudulent intent is inferred "when an insolvent debtor makes a transfer and gets nothing or very little in return." *Kupetz v. Wolf*, 845 F. 2d 842, 846 (9th Cir. 1988).

Here, the evidence in the record shows that at least six (6) "badges of fraud" are present. Each applicable to this case is discussed below:

(a) Actual or threatened litigation against the debtor at the time of the transfer.

The Debtor was involved in pending litigation at the time of the transfer. At the time of the APA transfer, Aarsvold and his previous companies (Strategix and ePassage) had been in litigation with Infocrossing since June of 2005. Aarsvold and his companies kept losing legal battles and per Aarsvold's own testimony, the APA was entered into because "it was unlikely that [Debtor] could get an additional line of credit for operating funds. . ." Tellingly, the Petition Date was only days after the state 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

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substantially all of Debtor's assets were transferred. Debtor disclosed only \$6.17 of personal property on its Schedule B. However in its Statement of Financial Affairs, Debtor admitted to receiving \$1,331,772.00 in gross income in 2010, and \$996,015.00 in gross income for 2011. The only logical explanation is that substantially all of Debtor's assets were transferred to Fusionbridge Wyoming. Defendants do not offer any documentary evidence showing that Debtor retained assets that were not transferred to Fusionbridge Wyoming.

Second, the plain language of the APA provides that there was a transfer of all or substantially all of Debtor's property. Specifically, section 1.1 of the APA provides that the Debtor was selling to Fusionbridge Wyoming all its "right, title, and interest in and to the assets of the Business.

Third, Fusionbridge Wyoming assumed all, save one, of Debtor's contracts to perform services. The only customer that Debtor did not transfer had a contract that ended before the APA sale closed on January 1, 2012. Based on the above evidence, this "badge of fraud" is present here.

(c) Debtor was rendered insolvent by the transaction.

It is uncontroverted and self-evident that Debtor was insolvent or became insolvent when the sale contemplated in the APA was concluded. Debtor no longer had assets to conduct business but retained virtually all of its liabilities. Wood Decl., 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

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Decl., Ex.2, pg. 49. Aarsvold himself recalled being the only person involved in deciding to enter into the APA. Wood Decl., Ex. 6, pg. 237:2-8. The evidence is clear--there existed a special relationship between Debtor and Fusionbridge Wyoming.

(e) Debtor did not receive reasonably equivalent value.

Debtor did not receive reasonably equivalent value in the APA transfer. Although Fusionbridge Wyoming received substantially all of Debtor's assets, the only consideration it "paid" to Debtor was the assumption of certain debts that had been personally guaranteed by Aarsvold. Even then, Fusionbridge Wyoming has not paid those debts. Yet the contracts Fusionbridge Wyoming received generated significant earnings. According to its 2012 tax return, Fusionbridge Wyoming earned approximately \$771,000 during 2012. Moreover, Aarsvold admitted he did not go through a process of trying to value the assets held by Fusionbridge California before transferring those assets to Fusionbridge Wyoming.

Defendants argue that somehow valid consideration was passed as equivalent value in their Opposition. Defendants' argument fails. First, Defendants' Opposition cites case law that elaborates on the definition of "reasonably equivalent value." See Opposition, pg. 6. What is sorely lacking in Defendants' Opposition, however, is any kind of evidence or specific facts pertaining to the APA transfer that support any kind 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

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practices suggest that Aarsvold desired to keep the APA transfer secret.

Defendants do not even address this "badge of fraud" in their Opposition. They do not assert that they disclosed the transfer to anyone, nor do they offer any evidence to rebut Trustee's claims. Without any argument or evidence to the contrary, the evidence on the record strongly indicates that the APA transfer was concealed and this "badge of fraud" is present.

(g) Conclusion of First Claim.

In conclusion, the Court should grant the Trustee's motion for summary judgment as to the first claim. Defendants concede that there was a transfer within 2 years of the petition date. The only remaining element in question is whether Defendants had the requisite intent. To infer intent, courts rely on the presence of "badges of fraud." Here, the record shows that at least six badges of fraud are present. These "badges of fraud" strongly indicate that Defendants had the intent to delay, defraud or hinder creditors. Defendants do not offer any documentary evidence or specifics to rebut Trustee's claims regarding these "badges of fraud." Defendants's only evidence is Aarsvold's self-serving declaration that he was actually attempting to assist the Debtor by transferring what he claims were mostly unprofitable accounts. But this is inherently incredible; the court does not see how denuding a corporation of all of its assets and leaving it with only debt can somehow be regarded as indicative of 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

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constructive fraudulent transfer under § 548(a)(1)(B), a trustee must establish (1) debtor transferred an interest in property, (2) debtor was insolvent at time of transfer or was rendered insolvent as a result of transfer, was engaged in business or was about to engage in business for which debtor's remaining property constituted unreasonably small capital, or intended to incur or believed that it would incur debts beyond its ability to pay as they matured, and (3) debtor received less than reasonably equivalent value in exchange for transfer. *In re Saba Enterprises, Inc.*, 421 B.R. 626, 645 (Bankr. S.D.N.Y. 2009); *In re Pajaro Dunes Rental Agency, Inc.*, 174 B.R. 557 (N.D. Cal. 1994).

Under California law, a transfer is constructively fraudulent: (1) as to a creditor whose claim arose before the transfer was made or the obligation was incurred; (2) if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and (3) the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation. Cal. Civ. Code § 3439.05.

As discussed below, Trustee meets all elements of a constructively fraudulent transfer under both Federal and state law. There is no genuine issue of material fact as to this claim.

(a) The transfer contemplated in the APA was a constructively 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

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lists, price lists, advertising and promotional materials, sales and marketing materials, e-mail addresses used in the Business; [and] the goodwill and other intangible assets of the Business." Wood Decl., Ex. 2, pg. 39 & 51. Defendants concede that a transfer occurred.

ii. Debtor was insolvent

It is also uncontested that Debtor was insolvent or became insolvent when the transfer contemplated in the APA was concluded. At the time of the transaction, Debtor had over one million dollars in debt but had virtually no assets with which such obligations could be paid. See Wood Decl., Ex. 28. Defendants also do not offer any argument or evidence to show that Debtor was not insolvent at the time the APA transfer was executed.

iii. Debtor received less than reasonably equivalent value

The Debtor did not receive "reasonably equivalent value in exchange for the transfer or obligation." Aarsvold admitted that "[n]o cash was exchanged" from Fusionbridge Wyoming to Debtor. Wood Decl. Ex. 5, pg. 166, at 79:20-21. Any revenue generated from the contracts was paid to Fusionbridge Wyoming. These customer contracts provided Fusionbridge Wyoming with approximately \$771,000 in revenue in 2012. Additionally, Fusionbridge Wyoming received Debtor's accounts 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.

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(b) The transfer contemplated in the APA was a constructively fraudulent transfer under California state law.

Trustee succeeds in establishing all the following requisite elements of a constructive fraudulent transfer under California state law.

i. There was a creditor in existence at the time the transfer was made

It is undisputed that there was at least one creditor in existence at the time the transfer was made. Pursuant to Cal. Civ. Code § 3439.05, Trustee must establish that there was a creditor in existence at the time of the transfer whose claim remained unpaid on the Petition Date. Here, there are at least two creditors.

On October 28, 2013, Superior Financial Group ("Superior"), filed proof of claim 4-1 indicating that Superior loaned Debtor \$10,000 pursuant to a "loan agreement/promissory note" executed by Aarsvold in December of 2008. As of the Petition Date, the account balance was \$12,847.92. Additionally, on November 4, 2013, Global Systems Integration, Inc. ("Global,") filed proof of claim 5-1 asserting a claim for \$18,662.50 ("Global POC"). According to the Global POC, Debtor incurred the \$18,662.50 liability between 2007 and 2008. The obligations to both Superior and 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.

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iii. Debtor was insolvent at the time of the transfer

Both state and federal law defining constructive fraudulent transfers share this element as well. As discussed above, Debtor was insolvent at the time of the APA transfer. This element is also undisputed. The record shows that Debtor had over one million in debt and virtually no assets to pay its obligations. Defendants do not argue this point and so this element is easily established.

(c) Conclusion of Second Claim.

Defendants offer no evidence to support an argument that Debtor received an equivalent value in the transfer. The other elements are uncontroverted. Thus there are no genuine issues of material facts as to any of the elements of this claim and the Court should grant summary judgment.

6. Third Claim for Relief—Breach of Fiduciary Duty

The elements of a claim for breach of fiduciary duty are "(1) the existence of a fiduciary relationship; (2) the breach of relationship; and (3) damages proximately caused by the breach." *In re Intelligent Direct Marketing*, 518 B.R. 579, 589 (E.D. Cal. 2014). While a director may be protected by the business judgment rule, an exception to the rule exists "in 'circumstances which inherently raise an inference of 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

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Admissions, No. 2-3, 5. Therefore there is no genuine issue of material fact under the first element that establishes Mr. Aarsvold owed a fiduciary duty to Debtor.

b. Aarsvold breached his fiduciary duty to Debtor.

Aarsvold breached his fiduciary duty to Debtor, and that the business judgment rule does not protect the actions taken by Aarsvold. A director breaches their fiduciary duty when approving and carrying out transactions "in 'circumstances which inherently raise an inference of conflict of interest' and the business judgment rule 'does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest.'" *In re Intelligent Direct Mktg., supra, at 589.*

Aarsvold breached his fiduciary duty by carrying out transactions in circumstances which were such as to inherently raise a conflict of interest. A "conflict of interest" is a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 112 (2008) (quoting Black's Law Dictionary 319 (8th ed. 2004)). The Trustee alleges that the circumstances surrounding Aarsvold, the CEO of the Debtor and Fusionbridge Wyoming, gave rise to the inference of a conflict of interest for a few reasons. First, a conflict of interest is inherent in Aarsvold's transfer of substantially all of the 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

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for the APA transfer.

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Alternatively, the Trustee makes the argument that the business judgement rule does not apply. Aarsvold's actions were taken with improper motives. The Trustee alleges that Aarsvold made the transfer in order to shield Debtor's assets from Infocrossing. Wood Decl., Ex. 2; Wood Decl., Ex. 6, Pg. 211-213. Infocrossing appeared ready to execute a judgment against Debtor when Aarsvold initiated the transfer of Debtor's assets to Fusionbridge Wyoming. Aarsvold does not deny such allegations made by the Trustee.

Aarsvold argues that he executed the transfer of assets from Debtor in order to prevent its contracts from becoming worthless and to prevent Debtor from "slipping into a position of bankruptcy." See Opposition, Pg. 8. Once again, Aarsvold fails to provide evidence. A party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda. *Hardwick v. Complete Skycap Services, Inc.*, 247 Fed. Appx. 42, 43-44 (9th Cir. 2007) (unpublished). Thus Aarsvold has failed to create a genuine issue of material fact about his true intentions as he has not presented evidence in support of his alleged intentions.

c. Mr. Aarsvold's breach of fiduciary duty damaged Debtor.

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

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admitted to receiving \$1,331,772.00 and \$996,015.00 in gross income respectively. Wood Decl., Ex. 1, Pg. 59. But after Aarsvold executed the transfer in 2012, Debtor only totaled a gross income of \$15,681.39. *Id.* In contrast, Fusionbridge Wyoming had a gross income of approximately \$771,000.00 in 2012. Wood Decl., Ex. 14; Wood Decl., Ex. 25.

The only defense Defendants offer in their Opposition is that Aarsvold's decision to execute the APA was a "valid business judgment." See Opp., pg. 8:20. Aarsvold transferred contracts that "required the use and deployment of specific contractors with specific skills." *Id.*, pg. 8:20-22. Defendants argue that "if these contractors left, they would be worthless, as is the nature of the business."

This argument fails for the following reasons. First, Defendants attach no documentary evidence showing the specifics of the contracts and how by transferring them, they were protecting the Debtor. Second, is it unclear why it matters that the transferred contracts required specific contractors. Did the contractors in fact leave? On the contrary, it appears the contractors continued working for Fusionbridge Wyoming after the APA transfer was executed.

In conclusion, the Trustee has satisfied all three elements for a claim of a breach of fiduciary duty by Aarsvold. There has been no genuine issue of material fact 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

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determine whether alter ego is present, courts consider numerous factors including commingling of funds and other assets, unauthorized diversion of corporate funds to other than corporate uses, the treatment by an individual of the assets of the corporation as his own, among others. Twenty-eight of these factors that indicate "alter ego" are listed in *Associated Vendors v. Oakland Meat Co.*, 210 Cal. App. 2d 838-840 (1962).

Here, many of the *Associated Vendors* factors are present.

First, Aarsvold uses multiple corporate entities for a single venture. When Aarsvold's previous companies (ePassage and Strategix) encountered legal problems, Aarsvold transferred their assets to Debtor. When Debtor was facing a judgment, Aarsvold transferred its assets to Fusionbridge Wyoming. Now that Trustee as asserted claims, Aarsvold ceased operating Fusionbridge Wyoming to work for "Glomad Services." Glomad Services was incorporated by Mrs. Aarsvold and Glomad lists the same principal office and mailing address as Fusionbridge Wyoming. Wood Decl., Ex. 16.

Further, a review of Aarsvold's company's financial statements provide evidentiary support for this factor. Aarsvold testifies that North Baker is owned by his wife and provided both Debtor and Fusionbridge Wyoming with IT and administrative 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.

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- The receivable owed to Debtor by North Baker was transferred to Fusionbridge Wyoming. As of December 31, 2012, North Baker owed Fusionbridge Wyoming \$489,562.41.

Second, Aarsvold diverted corporate assets. North Baker's financial statements show that Mr. Aarsvold diverted Debtor's assets to pay the obligations of his other entities. A review of North Baker's 2012 "Balance Sheet" indicates that North Baker had outstanding loan and note receivables from Aarsvold, Aarsvold's son—Andy Aarsvold, and accounts receivable owed from ePassage and Strategix. Wood Decl., 21, pg. 593. Moreover, North Baker lists as liabilities certain credit card obligations of Andy Aarsvold, Andy Asarsvold's student loans, and outstanding obligations owed to Debtor and/or Fusionbridge Wyoming.

Third, there is no dispute that Aarsvold owns and dominates Debtor and Fusionbridge Wyoming. By his own admission, Aarsvold owned and controlled ePassage, Strategix, Debtor, and Fusionbridge Wyoming. Wood Decl., Ex. 5, pg. 147, at 8:7-9; Ex. 6, pg. 203:2-4, pg. 222:10-11. Aarsvold executed the APA on behalf of Debtor and Fusionbridge Wyoming while serving as the CEO of both companies. Id.

Fourth, Mr. Aarsvold, Debtor and Fusionbridge Wyoming use the same address. See Wood Decl., Ex. 1; Ex. 6, pg. 183:14-15; 187:1-4; 227:6-16. 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

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Wyoming. Debtor had also loaned money to North Baker (Mrs. Aarsvold's company). Pursuant to the APA, that receivable was assigned to Fusionbridge Wyoming. These actions strongly indicate that Aarsvold improperly uses the corporate entity as a shield against personal and corporate liability.

Seventh, Aarsvold intentionally had Fusionbridge Wyoming operate as if it were Debtor. Fusionbridge Wyoming and Debtor shared the same mailing address and telephone number. Their logos are the same and their invoices also appear identical. Wood Decl., Ex. 22 & 23. Mr. Aarsvold's electronic signature on email is also identical from Debtor and Fusionbridge Wyoming. These actions strongly indicate Aarsvold's intent to present one single entity to customers.

In sum, multiple *Associated Vendors* factors are present to indicate that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other. Defendants do not even attempt to argue against this claim in their Opposition. Because of the undisputed evidence in the record, the Court determines that Aarsvold, Debtor, and Fusionbridge Wyoming are the alter egos of each other.

8. Affirmative Defenses

Trustee seeks summary judgment on each of Defendants' affirmative defenses. In their Answer to the Complaint, Defendants assert the following seventeen (17) 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;

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- (6) Plaintiff is barred from recovering damages because of unclean hands;
- (7) Plaintiff is stopped from recovery damages;
- (8) Plaintiff has waived any right to recover damages;
- (9) Plaintiff waited an unreasonable period of time to complain of the alleged wrongdoing;
- (10) Damages alleged in the Complaint were caused by other unnamed Defendants;
- (11) Allegations in the Complaint is barred by statutes of limitation;
- (12) Allegations in the Complaint are barred because the Defendants' actions were justified;
- (13) Plaintiff has not set forth a sufficient factual or legal basis for the recovery of attorneys' fees from Defendants;
- (14) Any award in Plaintiff's favor would constitute unjust enrichment;
- (15) Allegations in Complaint are barred because Plaintiff has not suffered 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

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judgment dismissing these defenses.

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9. Conclusion

Defendants have not offered any meaningful evidence to indicate a genuine issue of material fact as to any of Trustee's claims. Trustee's evidence in contrast is clear and persuasive. There does not appear to be any genuine issue of law. It would appear that this is a proper case for judgment by motion.

Party Information

Debtor(s):

FusionBridge, Ltd.

Represented By
Carlos F Negrete

Defendant(s):

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

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Trustee(s):

Karen S Naylor (TR)

Represented By
D Edward Hays
Karen S Naylor (TR)

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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8:18-12157 Norman Weaver, Jr.

Chapter 7

Adv#: 8:19-01017 Marshack v. Weaver, Jr. et al

- #4.00** 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 11-14-19 per order approving stip. between plaintiff & defendants 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

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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

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8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

#5.00 Defendants Richard P. Herman an Sabina C. Herman's Motion to Alter, Modify, Or Set Aside This Courts Order of October 22, 2019

Docket 84

Tentative Ruling:

Tentative for 1/23/2020:

Continue to coordinate with reported Rule 60 motion, if this continuance is not opposed. Otherwise deny as this motion raises nothing new and is not timely.

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

Movant(s):

Richard Paul Herman

Represented By
Richard P Herman

Plaintiff(s):

Foothill Financial, L.P.

Represented By
Jeanne M Jorgensen

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CONT... Richard Paul Herman

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Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

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8:19-13493 Ralph Maxwell Burnett, III

Chapter 11

Adv#: 8:19-01230 Ross v. Burnett, III et al

#6.00 Defendants' Motion to Dismiss Plaintiff Richard Ross Complaint To Determine Dischargeability OF Debts Under Sections 523(A)(2) And 523(A)(6) Of the Bankruptcy Code

Docket 6

Tentative Ruling:

Plaintiff has already filed an amended complaint, which essentially moots the motion to dismiss. The clerk has issued a new summons and notice of status conference for March 26, 2020.

In this somewhat unusual circumstance, it is likely best to grant the motion to dismiss with leave to amend as such relief is to be liberally granted in the Ninth Circuit. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Defendant has not filed a reply.

Grant the motion with leave to amend.

Party Information

Debtor(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones

Shelley Lynn Burnett

Represented By
Michael Jones

Joint Debtor(s):

Shelley Lynn Burnett

Represented By
Michael Jones

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CONT... Ralph Maxwell Burnett, III

Sara Tidd

Chapter 11

Plaintiff(s):

Richard Ross

Represented By
Thomas J Polis

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8:18-10582 David R. Garcia

Chapter 7

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

**#7.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(con't from 12-05-19)**

Docket 1

Tentative Ruling:

Tentative for 1/23/2020:
Status report?

Tentative for 12/5/19:
Status?

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.

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

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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CONT... David R. Garcia

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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

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

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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 1-23-20 per order continuing scheduling order as well as hrg on plaintiff's mtn to compel and for sanctions entered 12-19-19)

Docket 16

Tentative Ruling:

Tentative for 1/23/2020:
See #9.

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?

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.

Party Information

Debtor(s):

David R. Garcia

Represented By
Thomas J Tedesco

Defendant(s):

David R. Garcia

Represented By
Donald Reid

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

#9.00 Motion For Sanctions

Docket 55

Tentative Ruling:

This is Plaintiff's Motion for terminating sanctions and an award of attorney's fees, based on FRBP 7037. This Motion arises from PayPal documents due from the initial document production but allegedly withheld. Defendant in opposition claims he acted in good faith throughout the discovery process and delays were not attributable to his misconduct.

A. Terminating Sanctions

Where a party fails to obey an order to provide or permit discovery, the court may issue an order that renders a default judgment against the disobedient party. Fed. R. Civ. Proc. 37(b)(2)(A)(vi). But Plaintiff does not demonstrate how Defendant failed to comply with a court order. On February 11, 2019, this court issued an order requiring the Defendant to "serve responses and produce documents, without objection, in response to plaintiff's first set of demands no later than March 1, 2019." Defendant arguably has complied with the Order and produced all documents requested by Plaintiff in supplemental production requests. When Plaintiff notified Defendant that documents were missing, Defendant obtained the documents and e-mailed them to Plaintiff. Reid Decl. at ¶¶ 7-8, 10, 12; Opp'n. at Ex. 4-5, 8. Plaintiff later requested missing pages from a Buyout Agreement and Business Loan Agreement, as well as documents from Defendant's PayPal account. Reid Decl. at ¶ 17; Opp'n. at Ex. 11. Once again, Defendant complied with Plaintiff's request and e-mailed an explanation of the missing pages from the Buyout Agreement and Business Loan Agreement. Opp'n. at Ex. 16. Defendant arguably also complied with Plaintiff's request to produce the PayPal documents. Defendant attempted to download the documents from PayPal's website. Reid Decl. at ¶ 19; Opp'n at Ex. 13. After ten

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failed attempts, using different download parameters as requested by Plaintiff, Defendant contacted a PayPal representative through the "Message Us" chat function. Reid Decl. at ¶ 20; Opp'n. at Ex. 14. The PayPal representative stated that the requested documents would be produced within 72 hours. Opp'n at Ex. 14.

Unsurprisingly, the documents did not arrive within 72 hours. Defendant informed Plaintiff and offered to draft a subpoena. Opp'n. at Ex. 16. Plaintiff and Defendant collaborated on the subpoena and Defendant served the subpoena on PayPal. Opp'n at Ex. 17-18. The subpoena required PayPal to produce the responsive documents by August 26, 2019. Id.

On August 26, 2019, Plaintiff e-mailed Defendant inquiring about the PayPal subpoena and requested Defendant prepare a stipulation to extend discovery deadlines. Reid Decl. at ¶ 21. Defendant's counsel was unable to confirm whether the responses were received or prepare a stipulation because he was on a camping trip. Reid Decl. at ¶ 25. Nevertheless, PayPal did not produce the documents in response to the subpoena until September 17, 2019. Opp'n. at Ex. 24.

Plaintiff's counsel claims that she "had to file a unilateral stipulation to support [Plaintiff's] motion for compliance and sanctions because of defendant's bad-faith withholding of records." Plaintiff's Stip. in Supp. of Mot. to Compel. at Ex. 1, p. 5. Plaintiff and Defendant exchanged several e-mails asking one another to prepare a stipulation extending the discovery deadlines but could not come to an agreement. Id. at Ex. 1; Opp'n. at Ex. 20-21. This exchange does not necessarily evidence Defendant's bad faith but might just show a breakdown in communication between adversaries and (as is too often the case) a dismaying inability to cooperate.

On September 26, 2019, this Court granted Plaintiff's Motion to Compel the Production of Documents and for Sanctions in part ("Compel Order"). Order Granting Pl.'s Mot. to Compel the Prod. of Docs. and for Sanctions, ECF No. 47. The Compel Order required the Defendant to do the following:

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1. The defendant is ordered to provide plaintiff online access to all PayPal accounts maintained by him or his business—Hans-Drake International Corporation or Musclevorks Inc.—by 5:00 p.m. on Monday, September 30, 2019. The purpose is for plaintiff or her counsel to run and download detailed reports of all activity in such account(s) for the past seven years.
2. The defendant may comply with this order by providing the plaintiff with his log-in credentials—including any usernames, email addresses, mobile numbers, passwords, or other credentials necessary to access the account(s).
3. Alternatively, the defendant may comply with this order by arranging to log in to the account(s) in the presence of plaintiff's counsel and allowing her counsel to run and download detailed reports of all activity in such account(s) for the past seven years.

This court continued the hearing to evaluate whether sanctions or further orders are warranted.

Defendant chose the third option. On September 30, 2019, Defendant went to Plaintiff's counsel's office with the purpose of allowing Plaintiff's counsel to download detailed reports of all transactions in any PayPal accounts maintained by him or his businesses for the past seven years. Manee Decl. at ¶ 2. Defendant logged into his account in the presence of Plaintiff's counsel and downloaded the PayPal reports. *Id.* at ¶ 3. Thus, there is no evidence to support that Defendant failed to comply with the Compel Order.

A court should only terminate an action in the face of willfulness, bad faith, or fault. *Computer Task Group v. Brotby*, 364 F.3d 1112, 1115-17 (9th Cir. 2004). All that is required for willfulness, bad faith, or fault is "disobedient conduct not shown to be outside the control of the litigant." *Henry v. Gill Indus.*, 983 F.2d 943, 948 (9th Cir. 1993). To decide whether a sanction of default is appropriate, the court should weigh five 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 opposing party, (4)

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Chapter 7

the public policy favoring disposition of cases on their merits, and (5) the availability of less drastic sanctions." *Computer Task Group v. Brotby*, 364 F.3d 1112, 1115 (9th Cir. 2004). "Where a court order is violated the first and second factors will favor sanctions and the fourth will cut against them." *Id.* These factors are a way for the court to think about the issue, not a set of conditions precedent to its decision or a script rendering it. *Valley Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998).

Defendant has not violated a court order and has not offended the first two factors. The third and fourth factors weigh against the imposition of terminating sanctions. Defendant has illustrated a strenuous (if somewhat belated) battle to acquire the PayPal documents. Some of that may have been outside of his control. Defendant would be prejudiced if he is not allowed to defend this litigation. Whether Plaintiff suffers prejudice now that she has apparently obtained much if not most of the requested PayPal documents, is somewhat unclear, and public policy favors the disposition of cases on their merits.

The court must also consider less drastic sanctions by: (1) explicitly discussing the alternative of lesser sanctions and explain why it would be inappropriate, (2) implement lesser sanctions before ordering the terminating sanctions, and (3) warn the offending party of the possibility of dismissal. *Computer Task Group*, 364 F.3d at 1116. Here, the court has not yet found that Defendant failed to comply with a court order, imposed lesser sanctions, or explained why lesser sanctions would be inappropriate.

Defendant's evidence details a somewhat strenuous goose chase to retrieve the PayPal documents. This is not necessarily willfulness, bad faith, or fault, at least absent a better explanation how the Defendant could have overcome these obstacles earlier or easier. Plaintiff alleges that Defendant fraudulently produced documents and "fought tooth and nail to avoid shedding light on them" and used a PayPal account to divert money from his business, but "completely wiped any trace of that from his corporate books for the most critical time period in this case" Mot. at p.6 lns.19-23. Plaintiff's only supporting evidence of this incendiary allegation are spreadsheets that

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are described as "true and correct excerpts from the general ledgers that defendant produced for his business." Dabiri Decl. at ¶ 4. But Plaintiff fails to attach the corporate books to his Motion "due to their volume." Id. at ¶ 3. The absence of the original corporate ledgers makes it difficult for this court to determine whether the PayPal documents were even missing from the first initial production, and it remains unclear how deliberate the omission might have been.

When Plaintiff reviewed the PayPal records, she discovered thousands of transactions that were missing from the Initial Production. Jafarinejad Decl. at ¶ 3-5. But she provides no evidence to support the Defendant's intent to conceal the PayPal documents. This leaves open the possibility of simple inadvertence.

Plaintiff further alleges that Defendant had a duty to correct his fraudulent production and failed at both the moment he made it and in response to the court's oral and written orders. Mot. at p.6, lns.23-25. But this is exactly what the Defendant has apparently done or tried to do in his search to acquire and produce the responsive PayPal documents for Plaintiff.

Furthermore, Plaintiff relies on case law that is largely distinguishable. In *Computer Task Group v. Broby*, 364 F.3d 1112 (9th Cir. 2004), the defendant engaged in egregious discovery practices by giving contradictory answers, making frivolous objections, filing baseless motions, and never disclosing all the information sought by the plaintiff. 364 F.3d at 1114. Two monetary sanctions, five orders compelling him to cooperate, and repeated oral warnings were insufficient to obtain the defendant's cooperation and thus resulted in terminating sanctions. *Id.* at 1117. In *Hester v. Vision Airlines, Inc.*, 687 F.3d 1162 (9th Cir. 2012), the defendant intentionally delayed the production of documents, misrepresented its current and past production to the court, and engaged in bad faith conduct. 687 F.3d at 1169. The court in *Hester* granted the plaintiff's motion to compel the unredacted documents, but when the defendant failed to comply and produced a document that had not been previously produced, the court struck the defendant's answer and entered default judgment. *Id.*

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But the Defendant's conduct here is just not comparable to that in *Computer Task Group* or *Hester*. Defendant has produced all requested documents, without objection or redaction, and went through what seems extraordinary lengths to obtain the PayPal documents. But this is not to say the Defendants behavior is entirely blameless; clearly, a more strenuous effort would have been in order earlier, and reportedly we also have the problem that the earliest tranches of documents may now be lost because of PayPal's expungement of older records.

But Plaintiff fails to show Defendant's willfulness, bad faith, or fault enough to justify the imposition of terminating sanctions. Thus, with respect to terminating sanctions, the motion should be denied. But the court must still wrestle with the question of whether a lesser sanction is in order, particularly if we have now lost properly requested documents through the extraordinary delays in this case from what was ordered produced back in early 2019.

B. Attorney's Fees

Plaintiff requests \$38,550 of attorney's fees and costs against Defendant. See Dabiri Decl. at ¶¶ 5-6; Mot. at Ex. 2. Under FRCP Rule 37(d), the court may award sanctions if "a party, after being properly served with . . . a request for inspection under Rule 34, fails to serve its answers, objections, or written response." Fed. R. Civ. Proc. 37(d)(1)(A)(ii). While Defendant did not fail entirely to serve its answers, objections, or written responses, there is insufficient justification or explanation for why this *process took a year to complete*. Also, there is insufficient explanation as to how much if not all the content eventually found in the PayPal materials was not included or even mentioned in the earlier responses. An award of attorney's fees may be based on affidavits of counsel, so long as the affidavit is sufficiently detailed to support it. *Henry v. Gill Indus.*, 983 F.2d 943, 946 (9th Cir. 1993). Plaintiff's counsel, Mr. Dabiri, provides a log of the hours of work spent addressing the deficiencies in Defendant's document production, preparing Plaintiff's motion to compel, and preparing for the series of hearings regarding compliance and sanctions. Mot. at Ex. 2.

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The brief declaration from Mr. Dabiri sufficiently details his work regarding the discovery of the PayPal documents. The question is not whether the costs have been documented but rather whether in justice all of them are appropriately attributable to Defendant's misconduct. Additionally, a motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act to obtain the answer or response without court action." Fed. R. Civ. Proc. 37(d)(2); LBR 7026-1(c). This Motion does not formally certify (at least not this time) that Plaintiff attempted to meet and confer with Defendant or Defendant's counsel prior to filing this Motion. But the court does remember that this matter has been heard at least twice before and so the parties were certainly aware months and months ago what the issues were and what had to be done to comply, and so at least the spirit if not the letter of that rule and the LBRs can be said to have been met here. Plaintiff makes a good point that a reasonable degree of proactivity is expected when documents are requested under the requested party's possession or control. What appears on this record is, instead, a prolonged, difficult and agonizingly delayed effort to obtain records which Defendant must have known existed, and over which he had control, at least to some extent. Also missing is any adequate explanation from Defendant as to why this large volume of missing records was not even acknowledged earlier. The failure to produce timely records earlier, and the extraordinary lengths Plaintiff was put to here to obtain only a portion of what may have existed, cannot be ignored. But the offense is mitigated because of the apparent difficulty presented in dealing with PayPal and its computerized records and the lack of clarity as to whether there was a deliberate effort on Defendant's part to falsify or conceal what had been properly requested months earlier. Consequently, a lesser sanction of \$5000 in attorney's fees is awarded.

Award sanction of \$5000

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Chapter 7

Party Information

Debtor(s):

David R. Garcia

Represented By
Thomas J Tedesco

Defendant(s):

David R. Garcia

Represented By
Donald W Reid
Charity J Manee

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

8:19-11934 Jesse Arredondo

Chapter 7

Adv#: 8:19-01175 First National Bank Of Omaha v. Arredondo

**#10.00 STATUS CONFERENCE RE: Complaint Seeking Exception To Discharge Pursuant To 11 USC Section 523 (a)(2)(A)
(cont'd from 12-05-19)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
DISMISSAL WITH PREJUDICE FILED 1-15-20**

Tentative Ruling:

Tentative for 12/5/19:
See #21

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

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11:00 AM

8:19-11934 Jesse Arredondo

Chapter 7

Adv#: 8:19-01175 First National Bank Of Omaha v. Arredondo

**#11.00 Plaintiff's Motion For Default Judgment
(cont'd from 12-5-19)**

Docket 20

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
DISMISSAL WITH PREJUDICE FILED 1-15-20**

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.

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
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Santa Ana
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Tuesday, January 28, 2020

Hearing Room 5B

10:30 AM

8:19-13777 Mario Anthony Madrid, Jr and Margarita Madrid

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

PARTNERS FEDERAL CREDIT UNION
Vs.
DEBTOR

Docket 30

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY
FILED 1-08-20**

Tentative Ruling:

- NONE LISTED -

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
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Tuesday, January 28, 2020

Hearing Room 5B

10:30 AM

8:19-14475 Ryan Joseph Briggs

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

PARTNERS FEDERAL CREDIT UNION
Vs
DEBTOR

Docket 9

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ryan Joseph Briggs

Pro Se

Movant(s):

Partners Federal Credit Union

Represented By
Yuri Voronin

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

United States Bankruptcy Court
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Tuesday, January 28, 2020

Hearing Room 5B

10:30 AM

8:19-11828 Julian R Gonzalez and Maria Antonia Solorzano

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK
Vs
DEBTORS

Docket 38

***** VACATED *** REASON: SETTLED BY STIPULATION PER
ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC
STAY REAL PROPERTY ENTERED 1/27/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julian R Gonzalez

Represented By
James G. Beirne

Joint Debtor(s):

Maria Antonia Solorzano

Represented By
James G. Beirne

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:19-14430 John Zubko

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 12-17-19)**

METRO CALIFORNIA, LLC
Vs.
DEBTOR

Docket 8

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL ARISING FROM CHAPTER 13
CONFIRMATION HEARING ENTERED 1-17-20**

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

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CONT...

John Zubko

Chapter 13

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 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

Party Information

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

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Hearing Room 5B

10:30 AM

8:19-15004 Ghadi Aboulhosn

Chapter 13

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

Docket 13

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Ghadi Aboulhosn

Represented By
Andrew Moher

Movant(s):

Ghadi Aboulhosn

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

11:00 AM

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

Chapter 7

#6.00 Third Omnibus Objection To Secured Gift Card/Store Credit Claims:

Claim No. 48	Norkesha Norman
Claim No. 260	Maria Coconate
Claim No. 300	Candice Danford
Claim No. 306	Jennifer Caravantes
Claim No. 395	Elizabeth Osmundson
Claim No. 400	Mary Moore
Claim No. 442	Quoi Trinh
Claim No. 444	Elvia Lucio
Claim No. 491	Jo Ann Green
Claim No. 495	Shane Cox
Claim No. 500	Aileen Kiernan
Claim No. 509	Deborah R. Brookshire
Claim No. 584	Josephine Quinland
Claim No. 597	Alice Hire
Claim No. 641	Cynthia Jackson
Claim No. 843	Anna Chiechi

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CONT...

**Anna's Linens, Inc.
Claim No. 845**

Anna Chiechi

Chapter 7

Claim No. 1342

Cheyenne Debruyne

Claim No. 1372

Martha Vega

Claim No. 1462

Kelli Hopton

Docket 2655

Tentative Ruling:

Sustain. 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
Christopher Minier

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CONT... Anna's Linens, Inc.

Chapter 7

Jerrold L Bregman
Todd C. Ringstad
Brett Ramsaur
Richard C Donahoo
Andrew Still

**United States Bankruptcy Court
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Wednesday, January 29, 2020

Hearing Room

5B

10:00 AM

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

Chapter 11

**#1.00 Final Application for Allowance of Professional Fees and Costs
Period: 12/11/2018 to 11/26/2019**

M. Jones & Associates PC, Debtor's Attorney

Fee: \$25,650, Expenses: \$2363.00

Docket 83

Tentative Ruling:

Tentative for 1/29/20:
Allowed as prayed. Appearance is optional.

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

**United States Bankruptcy Court
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Wednesday, January 29, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 11

Adv#: 8:20-01002 Remares Global, LLC v. Olga Shabanets, as trustee of the 2012 Irrevocable

#2.00 Motion To Order Defendant Merrill Lynch, Pierce, Fenner & Smith Inc. to Deposit Funds into the Court's Registry or in the Alternative for an Order Prohibiting Release of Funds to Debtor or Any Third-Party Pending Adjudication of this Case
(OST Signed 1-22-20)

Docket 10

Tentative Ruling:

Tentative for 1/29/20:
No tentative. Opposition due at hearing.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Olga Shabanets, as trustee of the

Pro Se

Olga Shabanets

Pro Se

Igor Shabanets

Pro Se

Merrill Lynch, Pierce, Fenner &

Pro Se

Plaintiff(s):

Remares Global, LLC

Represented By
Bob Benjy
Alan W Forsley

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Thursday, January 30, 2020

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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.

**#1.00 STATUS CONFERENCE RE: Complaint to to Avoid and Recover Preferential Transfer
(con't from 10-31-19 as a holding date)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
VOLUNTARY DISMISSAL OF ADVERSARY PROCEEDING BY
PLAINTIFF [F.R.B.P. 7041 AND F.R.B.P. 41(a)(1)(A)(i)] FILED 11/8/19**

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.

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.

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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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):

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
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10:00 AM

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] **(con't from 10-31-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-26-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION FOR ORDER CONTINUING
STATUS CONFERENCE AND EVALUATION HEARING RE
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION ENTERED
1/24/2020**

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

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CONT... **Richard Paul Herman**
Karen Sue Naylor

Pro Se

Chapter 7

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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8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#3.00 Evaluation Hearing RE: Plaintiff's Motion for Preliminary Injunction
(con't from 10-31-19)**

Docket 5

***** VACATED *** REASON: CONTINUED TO 3-26-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION FOR ORDER CONTINUING
STATUS CONFERENCE AND EVALUATION HEARING RE
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION ENTERED
1/24/2020**

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

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CONT...

Richard Paul Herman

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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 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.

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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 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

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still have against Plaintiff.

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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 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'

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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 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 Plaintiff's 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."

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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 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*

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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 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

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

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CONT... **Richard Paul Herman**
Karen Sue Naylor

Pro Se

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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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8:18-11306 Kelvin Q. Tran

Chapter 7

Adv#: 8:19-01054 Casey v. Tran et al

**#4.00 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)
(cont to 1-30-20 per ord ent. 10-3-19)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION TO DISMISS ADVERSARY PROCEEDING AND TAKING
PRE-TRIAL CONFERENCE OFF CALENDAR ENTERED 1-10-20**

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

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8:17-14351 Freda Philomena D'Souza

Chapter 11

Adv#: 8:19-01082 D'Souza v. SAMY S. ANTOUN AND SAMIA Z. ANTOUN, TRUSTEES

**#5.00 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 11-14-19)**

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Tentative Ruling:

Tentative for 1/30/20:

Status conference continued to February 27, 2020 at 11:00AM. Expect MSJ or stipulation in meantime.

Tentative for 11/14/19:

Status conference continued to December 12, 2019 at 2:00PM to coincide with the MSJ.

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

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Plaintiff(s):

Freda Philomena D'Souza

Represented By
Michael Jones

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8:17-14351 Freda Philomena D'Souza

Chapter 11

Adv#: 8:19-01082 D'Souza v. SAMY S. ANTOUN AND SAMIA Z. ANTOUN, TRUSTEES

- #6.00** 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
(cont'd from 12-12-19 per order approving stip. to cont. hrg. on mtn for msj entered 12-11-19)

Docket 8

Tentative Ruling:

Tentative for 1/30/20:

This motion for summary judgment is effectively unopposed, although the debtor did file "Declaration of Attorney Sara Tidd as Supplement to Joint Status Report" on November 12, 2019. In the Supplemental Report attorney Tidd does relay a disturbing lack of cooperation in the court-ordered mediation. It sounds like the Defendants deliberately strung out the process until time had almost elapsed, and then at the last possible moment filed instead this motion. Normally, this tactic would result in a denial or at least a postponement, to not reward sharp tactics. But on the other hand, this motion is so obvious that the court is at something of a loss to decide which message is the more important one, i.e.: (1) don't mess around with the mediation process and sharp tactics are not to be rewarded, vs. (2) "Really? Do you think the court could enforce such a draconian provision in favor of someone already in default...? oh, and don't put any more such provisions into your plans."

After some reflection the court opts for door number 2 as the more important message, partly because this precise issue has already been decided once before in this case and has thus become "law of the case." See *D'Souza v. Bochner*, 8:19-ap-01111TA.

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1. Brief Factual Background

Defendants loaned \$613,805.41 to Debtor, which was secured by the property commonly known as 167 Avenida Florencia, San Clemente, California 92672. Debtor filed a voluntary Chapter 11 petition on November 1, 2017. Defendants filed their proof of claim on February 8, 2018 in the amount of \$613,805.41. Debtor's plan of reorganization was filed on May 1, 2018. The original treatment under the plan provided that Defendants would be repaid over a thirty-year period, which made little sense as Defendants are in their mid-80s.

On or about July 26, 2018, the Debtor and the Defendants entered into a Stipulation for Plan Treatment (the "Stipulation"). In accordance with the Stipulation, the Debtor was to remit payments to the Defendants in the amount of \$3,680.07 for a period of 72 months with a balloon payment of \$561,876.27 due on the 72nd month after the Effective Date of the Plan. The Stipulation dictates that it shall replace the treatment of Defendants' Claim set forth in the Plan. It is somewhat unclear whether that was meant to supersede all other Plan provisions that might affect payment of the claim, such as the one discussed below purporting to cancel claims if payments are not promptly negotiated. By order dated July 30, 2018, the court approved the Stipulation. Debtor's plan was confirmed on September 14, 2018. The effective date of the plan was 15 days from the confirmation date.

Debtor's first payment was due on or before October 1, 2018. By January 7, 2019, the Debtor had missed two payments to the Defendants. On January 7, 2019, the Defendants caused to be sent a Notice of Default to the Debtor as described in the Stipulation. Subsequently, the Debtor claims, that she made the following payments (i) \$3,680.07 on or about January 29, 2019 ("January Payment") and (ii) \$3,680.07 on or about March 1, 2019 ("March

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Payment"). The Debtor admits that she stopped payment on both the January Payment and the March Payment on April 1, 2019. The Debtor's purported explanation for stopping payment is that Defendants allegedly did not timely negotiate the January Payment (reportedly one day late).

The Debtor relies on the Plan provision that states:

"III.D. Termination of Obligations in the event of Unprocessed Payments

[A]ny 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 obligations to such creditor. If the obligation of the creditor is secured against collateral and terminated under this provisions, the lien securing the obligation shall also be void and terminated." (hereinafter "forfeiture/cancellation provision")

2. Excuse of Counter Performance and Unclean Hands

Debtor's conduct is particularly suspect because the Debtor issued a stop payment just one day after the purported 60-day period expired. Debtor then suggests that she was not obligated to make *any* additional Plan payments, in effect achieving a \$561,000+ windfall under the forfeiture/cancellation provision. Debtor has it backward. Debtor's *default under the Plan precludes her from enforcing any of its provisions* as against the Defendants. Again, even with the alleged January Payment and March Payment, the Debtor still would have been in default. Debtor's default is not in dispute. In the Complaint, the Debtor admits that (i) she made it impossible for the Defendants to negotiate the January Payment and the April Payment and (ii) has failed to make the required payments under the Plan. Therefore, by the Debtor's own apparent admissions, in accordance with the Stipulation, the Debtor is in default. The Stipulation provides as follows:

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"If Debtors fail to cure the default upon the passage of thirty-one (31) days after written notice is mailed, then the Lender shall be entitled to file and serve a declaration under penalty of perjury setting forth in detail the Debtors' failures to perform hereunder, together with a proposed order terminating the stay as to Antoun Trust, which the Court may enter without further notice or hearing."

The Defendants complied with this notice provision by sending the Debtor the First Notice of Default. In addition, once the Defendants realized that the Debtor had stopped payment on the checks, on May 3, 2019 the Defendants sent another Notice of Default to the Debtor ("Second Notice of Default"). In other words, Defendants followed the procedures set forth in the plan of reorganization as modified in the Stipulation. Then, just three days after receiving the Second Notice of Default, Debtor filed the complaint commencing this adversary proceeding. The entire basis of the complaint hinges on the Debtor's claim that the Defendants have forfeited their secured claim in accordance the forfeiture/cancellation provision detailed above. The complaint does not contain any other basis for relief.

Defendants argue the court should grant summary judgment in Defendant's favor because none of the above facts will be or could be disputed. As Debtor apparently subscribes to the conclusion that a confirmed plan is essentially a new contract, would not ordinary and basic rules of contract also apply? A fundamental principle of contract law is that a material breach by one party excuses counter performance by the non-breaching party. See *In re Crystal Cathedral Ministries*, 2018 WL 5815866 (Bankr. C.D. Cal. 2018). So, whether as a function of the ancient precept that material breach excuses counter performance, or by the specific provisions of the Plan as modified in the Stipulation, Debtor was in no contractual position to trigger the forfeiture provision upon which she now relies.

As an additional basis for relief, Defendants argue that Debtor should

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be precluded from any recovery on her complaint by the doctrine of unclean hands. "The application of the 'clean hands' doctrine rests in the sound discretion of the trial court." *First Ascent Ventures Inc. v. DLC Dermacare LLC*, 312 F. App'x 60, 61 (9th Cir. 2009). The doctrine of unclean hands "bars relief to a plaintiff who has violated conscience, good faith or other equitable principles in his prior conduct, as well as to a plaintiff who has dirtied his hands in acquiring the right presently asserted." *Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir. 1989) (citations omitted). Here, Defendants argue that Debtor comes to this court with unclean hands because the Debtor engineered a set of facts designed to trigger the forfeiture/cancellation provision in the Plan, all while she was in default under the Plan and Stipulation, and knew she was in default. This type of conduct should not be countenanced by the court, and certainly not rewarded with a favorable judgment. This undercuts any equitable basis for the Complaint as well.

3. Conclusion

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 forfeiture/cancellation provision was superseded by the 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 a valid lien or disallow Defendant's legitimate claim with a huge windfall for such a relatively trivial offense of delay in cashing a check, at least not on these undisputed facts. Had the court focused on this draconian forfeiture/cancellation provision (no one highlighted it at the time) it would likely not have confirmed the Plan as written, as it is an offense against equity. But a good argument is made that the Stipulation superseded it in any event. And even if that were not true under both

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contractual and equitable principles the court could not reach the result Debtor requests here. It is very likely that had an opposition been filed and this summary judgment motion carried through in the usual fashion, the court's analysis would have been precisely the same as the analysis quoted above from the *Bochner* case, which is law of the case. But the court takes time to write rather than proceed by default only because it wants the parties to understand that *there are still some guardrails in place in these proceedings*. The court's only regret is that it prefers that all matters be settled on amicable terms whenever possible, and the court takes a very dim view of parties that thwart the mediation process, even if they think they hold the upper hand. But in these circumstances that may be the lesser evil.

Grant

p.s. Based on the reply filed by Defendants on January 16, 2020, it appears the parties have attended one day of mediation, which while productive, was not ultimately successful. A response from Debtor to the MSJ was due on January 9, 2020, but Debtor elected not file one. Defendants are requesting fees and costs in connection with the litigation and this motion.

Party Information

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

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8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

#7.00 STATUS CONFERENCE RE: Complaint by Plaintiff: Estate of William L. Seay against Defendant: Thomas H. Casey, Chapter 7 Trustee (cont'd from 12-05-19 per order on amended joint stip. to stay adv. action pending ruling on mtn to withdraw reference and request of cont. pending hearings entered 12-03-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-26-20 AT 11:00 A.M.
PER ORDER ON JOINT STIPULATION RE: STAY OF ADVERSARY
ACTION PENDING RULING ON MOTION TO WITHDRAW
REFERENCE AND REQUEST TO CONTINUE PENDING HEARINGS
ENTERED 1-21-20**

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

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Robert A. Ferrante

Kathleen J McCarthy
Brendan Loper

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8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

#8.00 Motion To Dismiss First Amended Adversary Complaint, Or In The Alternative, To Strike Portions
(cont'd from 12-19-19 per order on amended joint stip. re: stay of adv. action pending ruling on mtn to withdraw reference and req. to cont. pending hrgs entered 12-03-19)

Docket 11

***** VACATED *** REASON: CONTINUED TO 3-26-20 AT 11:00 A.M.
PER ORDER ON JOINT STIPULATION RE: STAY OF ADVERSARY
ACTION PENDING RULING ON MOTION TO WITHDRAW
REFERENCE AND REQUEST TO CONTINUE PENDING HEARINGS
ENTERED 1-21-20**

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

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Trustee(s):

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Vogele

Brendan Loper

Cathrine M Castaldi

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8:13-20028 Tara Jakubaitis

Chapter 7

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

#9.00 Motion to Dismiss Adversary Proceeding As To Frank Jakubaitis

Docket 183

***** VACATED *** REASON: CONTINUED TO 2-06-20 AT 11:00 A.M.
PER ORDER GRANTING EX PARTE APPLICATION TO CONTINUE
DEFENDANTS' MOTION TO DISMISS PURSUANT TO FRCP 12(b)(6)
ENTERED 1-28-20**

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

Thursday, January 30, 2020

Hearing Room 5B

11:00 AM

8:11-24750 **Kenny G Enterprises, LLC**

Chapter 7

#10.00 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 8-1-19)

Docket 0

***** VACATED *** REASON: CONTINUED TO 2-6-20 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 & STATUS
CONFERENCE FROM 1-30-20 AT 11:00 TO 2-6-20 AT 11:00 AM.
ENTERED 1-21-20**

Tentative Ruling:

Tentative for 8/1/19:
See #17

Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

Tentative for 3/6/18:
No tentative.

**United States Bankruptcy Court
Central District of California
Santa Ana
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11:00 AM

CONT... Kenny G Enterprises, LLC
Tentative for 1/24/17:

Chapter 7

This is the oft-continued hearing for status conferences concerning Kenneth Gharib's ("contemnor"), ongoing contempt, as well as a hearing on his motion late-filed on January 12 as #17 on calendar, styled as: "Notice of Motion and Motion to Dismiss the Sanction Order; Defense of Impossibility to Comply as of January 2017." The court repeats verbatim below the tentative decision from its September 14, 2017 hearings because, regrettably, nothing or almost nothing has changed. For those earlier hearings and conferences the court wrote:

"This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and, in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility defense. Mr. Gharib has been in custody under this court's order since May of 2015.

It is clear that the contemnor has the burden of proving impossibility. But Mr. Gharib has cited *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F. 2d 770 (9th Cir. 1983) for the proposition that impossibility is a complete 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

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CONT...

Kenny G Enterprises, LLC

Chapter 7

subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

"In March of 2015, foreigner [sic] investors decided to terminate their contract and business with Gharib. Foreigner investors demanded and instructed Gharib to close all bank accounts of Best Entertainment Corp and Hayward Corporation in Bank of America and transfer the remaining balance to Office Corp. Gharib followed foreigner investors demand and instruction and he closed both bank accounts of Best

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11:00 AM

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Kenny G Enterprises, LLC

Chapter 7

Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

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

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Kenny G Enterprises, LLC

Chapter 7

offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly ending in about 2014 and that, believing he was a successful businessman, she trusted him and allowed him to use her signature on various items and documents on things she apparently does not understand. [Transcript p. 57, line 16-19]. But, importantly, she testified she had absolutely no knowledge of either Office Corp or D Coffee Shop corporations or of any transfers therefrom [Transcript p. 75, line 6-7] and identified that her purported signature on several of said corporations' papers offered as exhibits by the Trustee were forgeries. [Transcript at p. 56, line 1-17] Interestingly, she also testified that Mr. Rushtabadi, the brother, requested by telephone just before the deposition that she leave the country. [Transcript pp. 22-23] Why she should leave her home on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid service just as Mr. Rushtabadi has reportedly done (at least so far).

In sum, the court is even less persuaded than before that Mr. Gharib does not have continuing access to funds and the ability to control funds, suing various 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

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CONT... **Kenny G Enterprises, LLC**

Chapter 7

remaining money from the account maintained by D Coffee Shop Corporation's (a subsequent transferee from Office Corporation, itself a transferee from the debtor) at Bank of America in a series of over-the-counter withdrawals, presumably in cash. For a few weeks between January 11 through February 26, 2016 (See, Exhibits "2" and "3" to Trustee's Declaration) these withdrawals are supported by video evidence of Mr. Rushtabadi receiving the cash. But it appears that the incremental depletion of the account has actually gone on for months earlier in cash withdrawal amounts alternating between \$4500 and \$3500. Exhibit "1." But the court notes that all withdrawals appear to be below the regulatory threshold of \$10,000. The contemnor argues that it is impossible now to comply with the court's order because he is indigent and has no control over either his brother's or Ms. Firouzabadi's activities (or funds). The contemnor correctly points out that many of these transfers occurred after he was confined. But the court is not so naïve as to believe that transfers to corporations ostensibly controlled by a one-time girlfriend and a brother necessarily means that the contemnor has no ongoing control. At the very least it is the contemnor's burden to prove this to be the case and that burden is manifestly not carried here. The simple fact that Mr. Rustabadi refuses to cooperate by giving testimony, either in response to the Trustee's subpoenas or, conspicuously, even in support of his own brother's testimony which might relieve contemnor's incarceration, renders this whole line of excuse very dubious. Equally dubious is the argument that because the contemnor has allegedly not formally communicated with either the girlfriend or the brother in several months according to the contemnor's declaration and the records of the Metropolitan Detention Center, this must mean he has no ongoing control. But the court declines to take such an inference. Even less persuasive is the argument that the District Court has approved an *in forma pauperis* waiver of fees; all this means is that someone at the District Court believes what contemnor has said in an application, not that it is necessarily true. Rather, absent some more compelling and direct evidence to the contrary (such as declarations from Mr. Rustabadi or Ms. Firouzabadi), the court is more inclined to believe

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CONT... **Kenny G Enterprises, LLC**

Chapter 7

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 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

**United States Bankruptcy Court
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CONT... **Kenny G Enterprises, LLC**

Chapter 7

in *dicta* and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the question of self-induced impossibility, the Ninth Circuit has ruled subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

"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

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Kenny G Enterprises, LLC

Chapter 7

remaining balance to Office Corp. Gharib followed foreigner investors demand and instruction and he closed both bank accounts of Best Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

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

**United States Bankruptcy Court
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CONT... **Kenny G Enterprises, LLC**

Chapter 7

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 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.

Deny motion to dismiss. Continue for further evaluation conference.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, January 30, 2020

Hearing Room 5B

11:00 AM

CONT... Kenny G Enterprises, LLC

Chapter 7

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

**United States Bankruptcy Court
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Thursday, January 30, 2020

Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#11.00 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 8-1-19)

Docket 457

***** VACATED *** REASON: CONTINUED TO 2-6-20 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 STATUS
CONFERENCE FROM 1-30-20 AT 11:00 A.M. TO 2-6-20 AT 11:00
ENTERED 1-21-20**

Tentative Ruling:

Tentative for 8/1/19:
No tentative.

Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

Tentative for 3/6/18:
No tentative.

Tentative for 1/24/17:

**United States Bankruptcy Court
Central District of California
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Thursday, January 30, 2020

Hearing Room 5B

11:00 AM

CONT... **Kenny G Enterprises, LLC**
See #15.

Chapter 7

Tentative for 9/14/16:
See #6.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

**United States Bankruptcy Court
Central District of California
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Thursday, January 30, 2020

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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#12.00 Motion For Release From Custody And To Lift Order Of Continuing Civil Contempt

Docket 774

***** VACATED *** REASON: CONTINUED TO 2-6-20 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 STATUS
CONFERENCE FROM 1-30-20 AT 11:00 TO 2-6-20 AT 11:00 A.M.
ENTERED 1-21-20**

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
Thomas H Casey

United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, February 4, 2020

Hearing Room 5B

10:30 AM

8:19-11406 Kristy Marie Kaatmann

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CAPITAL ONE AUTO FINANCE
Vs.
DEBTOR

Docket 41

*** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 1-31-
20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristy Marie Kaatmann

Represented By
Anil Bhartia

Movant(s):

Capital One Auto Finance, a division

Represented By
Cheryl A Skigin

Trustee(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 4, 2020

Hearing Room 5B

10:30 AM

8:19-13020 Patricia Bullock

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CARVANA LLC
Vs.
DEBTOR

Docket 79

Tentative Ruling:

Tentative for 2/4/20:
Grant unless post-petition current or APO.

Party Information

Debtor(s):

Patricia Bullock

Represented By
William J Smyth

Movant(s):

Carvana, LLC

Represented By
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, February 4, 2020

Hearing Room 5B

10:30 AM

8:16-12484 Robert Arcadio Acosta

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

LA CASA REAL OWNERS ASSOCIATION
Vs.
DEBTOR

Docket 41

Tentative Ruling:

Tentative for 2/4/20:

Grant unless current or APO. Lack of statements, even if true, is a lame excuse on what should be a recurring monthly obligation. Also, the court has little sympathy for post-petition defaults.

Party Information

Debtor(s):

Robert Arcadio Acosta

Represented By
Brian J Soo-Hoo

Movant(s):

La Casa Real Owners Association

Represented By
Alyssa B Klausner

Trustee(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 4, 2020

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
(cont'd from 1-07-20)

STATE FARM BANK, F.S.B.
Vs.
DEBTOR

Docket 43

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FROM THE
AUTOMATIC STAY UNDER 11 USC SECTION 362 ENTERED 1-31-20**

Tentative Ruling:

Tentative for 1/7/20:
Same.

Tentative for 12/17/19:
Grant. Appearance is optional.

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning
Barry E Borowitz

Movant(s):

State Farm Bank, FSB

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, February 4, 2020

Hearing Room 5B

10:30 AM

8:17-11435 Kimberlee Ann Fotiades

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 47

Tentative Ruling:

Tentative for 2/4/20:
Grant unless APO. The court is not sympathetic on post-petition, post-confirmation defaults.

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning
Barry E Borowitz

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry
Alexander K Lee
Eric P Enciso

Trustee(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 4, 2020

Hearing Room 5B

10:30 AM

8:18-12220 Cat Kenny Nguyen

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 120

Tentative Ruling:

Tentative for 2/4/20:
Deny if Movant confirms Debtor is current.

Party Information

Debtor(s):

Cat Kenny Nguyen

Represented By
Gregory L Bosse

Movant(s):

Wells Fargo Bank, NA, as Trustee,

Represented By
Robert P Zahradka

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, February 4, 2020

Hearing Room 5B

10:30 AM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

**#7.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-7-20)**

WILMINGTON TRUST, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 42

Tentative Ruling:

Tentative for 2/4/20:
Same.

Tentative for 1/7/20:
Grant unless current or APO.

Party Information

Debtor(s):

Wendie Lorraine Brigham

Represented By
Christopher J Langley

Movant(s):

Wilmington Trust, National

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, February 4, 2020

Hearing Room 5B

10:30 AM

8:19-13164 Marc Wayne Wright

Chapter 7

#8.00 Motion for relief from the automatic stay REAL PROPERTY

PUERTO ESCONDIDO LLC
Vs.
DEBTOR

Docket 31

Tentative Ruling:

Tentative for 2/4/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

Movant(s):

Puerto Escondido LLC

Represented By
Martin W. Phillips

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, February 4, 2020

Hearing Room 5B

10:30 AM

8:19-14912 Igor Shabanets

Chapter 11

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

REMARES GLOBAL LLC
Vs.
DEBTOR

Docket 44

Tentative Ruling:

Tentative for 2/4/20:
Continue for Notice to February 5, 2020 @ 10:00AM.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Remares Global, LLC

Represented By
Alan W Forsley

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

Tuesday, February 4, 2020

Hearing Room 5B

10:30 AM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#9.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate REAL PROPERTY [8552 Elmer Lane Garden Grove, CA 92841] **(OST signed 1-24-2020)**

Docket 12

Tentative Ruling:

Tentative for 2/4/20:
Opposition is due at the hearing per OST.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

Aureliano Gonzalez

Represented By
Elena Steers

Juana Artega De Gonzalez

Represented By
Elena Steers
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**

Tuesday, February 4, 2020

Hearing Room

5B

11:00 AM

8:19-14600 Consumer Financial Alliance LLC

Chapter 7

#10.00 Motion To Dismiss Chapter 7 Bankruptcy

Docket 11

Tentative Ruling:

Tentative for 2/4/20:

Deny. The amended notice does not provide sufficient notice as required by the LBRs (21 days). It also appears that there was no service on Debtor's counsel.

But even overlooking that issue, the court does not see any prohibition about a 50% member filing a petition. Fiduciary treatment in the interest of creditors is evidently needed in any case given the counter charges of gross malfeasance.

Party Information

Debtor(s):

Consumer Financial Alliance LLC

Represented By
Krystina T Tran

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, February 4, 2020

Hearing Room 5B

11:00 AM

8:19-11603 Gina T. Diep

Chapter 7

#11.00 Trustee's Final Report And Applications For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY,LLP, OTHER PROFESSIONAL

Docket 28

Tentative Ruling:

Tentative for 2/4/20:
Allow as prayed. Appearance is 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, February 4, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#12.00 Fourth Omnibus Objection to Secured Gift Card/Store Credit Claims:

Claims Subject to Objection:

Claim No. 132	Sally Canovas
Claim No. 320	Traci McKenzie
Claim No. 353	Cynthia Lindberg
Claim No. 443	Rhonda Kurka
Claim No. 511	Donna Shelley
Claim No. 598	Stephanie Barnett
Claim No. 646	M. Atkins
Claim No. 664	Nelly Gonzalez
Claim No. 671	Donna Artigas
Claim No. 749	Oddie V. Gilbert
Claim No. 750	Virga S. Stewart
Claim No. 760	Vernee Waddy
Claim No. 799	Betty Powell
Claim No. 1051	Rosie Alderete
Claim No. 1055	Loretta H. Theisen

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

Tuesday, February 4, 2020

Hearing Room

5B

11:00 AM

CONT...

Anna's Linens, Inc.

Chapter 7

Claim No. 1300

Julie Bock

Claim No. 1382

Virga S. Stewart

Claim No. 1409

Narindai Persaud

Claim No. 1434

Shonea Pullaim

Claim No. 1460

Charlene Towns

Docket 2682

Tentative Ruling:

Tentative for 2/4/20:
Sustain.

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

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

Tuesday, February 4, 2020

Hearing Room 5B

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, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#1.00 Status Conference RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 12-4-19)**

Docket 1

Tentative Ruling:

Tentative for 2/5/20:

Continue status conference. Continue approximately 60 days to allow analysis of plan and disclosure statement due 2/28/20.

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.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By

Misty A Perry Isaacson

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

Wednesday, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#2.00 Motion to Use Cash Collateral
(cont'd from 11-06-19)**

Docket 5

Tentative Ruling:

Tentative for 2/5/20:
Continue use on same terms pending continued status conference.

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?

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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

Wednesday, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 11

**#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 1-22-20)**

Docket 1

Tentative Ruling:

Tentative for 2/5/20:
Appoint either Chapter 11 trustee or convert. Court will hear argument over
which is better.

Tentative for 1/22/20:
Why no status report? Continue to February 5, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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

Wednesday, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 11

#4.00 Motion for an Order Appointing Chapter 11 Trustee

Docket 22

Tentative Ruling:

Tentative for 2/5/20:
Convert to Chapter 7.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Strategic Asset Group, LLC

Represented By
Alan W Forsley

Global Approach, Inc.

Represented By
Alan W Forsley

Remares Global, LLC

Represented By
Alan W Forsley

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

Wednesday, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 11

**#4.10 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 2-04-20)**

REMARES GLOBAL LLC
Vs.
DEBTOR

Docket 44

Tentative Ruling:

Tentative for 2/5/20:

Motion is granted in part. Relief from stay is granted to pursue all procedural requirements in state court to enter a judgment. However, any levy must await further order after appointment of a trustee. Also, pursuit of any judgment must be with consent of the trustee and order of this court.

Tentative for 2/4/20:

Continue for Notice to February 5, 2020 @ 10:00AM.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Remares Global, LLC

Represented By
Alan W Forsley

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

Wednesday, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

#5.00 Confirmation Of Chapter 11 Plan

Docket 38

Tentative Ruling:

Tentative for 2/5/20:
Confirm.

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, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#6.00 Motion For Order Determining Value of Collateral [11 U.S.C. § 506(a), FRBP 3012)

Docket 79

Tentative Ruling:

Tentative for 2/5/20:
Grant.

Party Information

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, February 5, 2020

Hearing Room 5B

10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

#7.00 Motion For An Order Disallowing Proof Of Claim No. 2 (As Amended) Filed By Department Of Treasury - Internal Revenue Service Against Visiblegains, Inc (cont'd from 12-4-19 per order approving stip. to cont. hrg entered 11-20-19)

Docket 85

*** VACATED *** REASON: CONTINUED TO MARCH 25, 2020 AT 10:00 A.M. PER ORDER APPROVING SECOND STIPULATION TO CONTINUE HEARING ENTERED 1/24/20

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 6, 2020

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)
(set from p/c hrg held on 12-12-19)**

Docket 1

Tentative Ruling:

Tentative for 2/6/20:

Discuss appropriate approach to this action in view of appellate court's reversal of default. Moratorium order? Continuance?

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:

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

Thursday, February 6, 2020

Hearing Room

5B

10:00 AM

CONT... Maria T. Misa

Chapter 7

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:
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?

Party Information

Debtor(s):

Maria T. Misa

Represented By
W. Derek May

Defendant(s):

Maria T. Misa

Pro Se

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

Thursday, February 6, 2020

Hearing Room 5B

10:00 AM

CONT... Maria T. Misa

Chapter 7

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, February 6, 2020

Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:19-01047 Golden v. Easton & Easton, LLP et al

#2.00 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 (con't from 6-6-19)

Docket 1

Tentative Ruling:

Tentative for 2/6/20:
Status conference continued to March 26, 2020 at 10:00a.m.

Court expects finalization of reported settlement documentation.

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.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian

Represented By
Timothy McFarlin

Defendant(s):

Easton & Easton, LLP

Pro Se

Margeaux O'Brien

Pro Se

Carolyn Farmanfarmaian

Pro Se

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

Thursday, February 6, 2020

Hearing Room 5B

10:00 AM

CONT... Nezamiddin Farmanfarmaian

Chapter 7

Nezamiddin Farmanfarmaian

Pro Se

Plaintiff(s):

Jeffrey I Golden

Represented By
Aaron E de Leest

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Aaron E de Leest

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

Thursday, February 6, 2020

Hearing Room 5B

10:00 AM

8:19-13104 Rodrigo Ayala

Chapter 7

Adv#: 8:19-01220 SCHOOLSFIRST FEDERAL CREDIT UNION v. Ayala

#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
11 USC 523(A)(2)(a)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ADVERSARY
DISMISSED - REQUEST FOR DISMISSAL OF ADVERSARY
PROCEEDING FILED 12-12-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodrigo Ayala

Represented By
Lorrie A Walton

Defendant(s):

Rodrigo Ayala

Pro Se

Plaintiff(s):

SCHOOLSFIRST FEDERAL

Represented By
Paul V Reza

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 6, 2020

Hearing Room 5B

10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

**#4.00 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 at s/c held 8-15-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-27-20 PER ORDER GRANTING EX PARTE APPLICATION TO CONTINUE DEFENDANTS' MOTION TO DISMISS PURSUANT TO FRCP 12(b)(6) AND THE PRE-TRIAL CONFERENCE ENTERED 2-05-20**

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.

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

Thursday, February 6, 2020

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

Chapter 7

Tentative for 9/14/17:
Why no status report from defendant? Should trial be scheduled before
discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can
be set.

Tentative for 5/4/17:
Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines
make sense at this juncture given the ongoing disputes over even
commencing discovery?

Tentative for 3/23/17:
See #13.1

Tentative for 12/8/16:
No status report?

Tentative for 3/10/16:
See #6 and 7.

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

Thursday, February 6, 2020

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

Chapter 7

Tentative for 1/14/16:

Status conference continued to March 10, 2016 at 11:00 a.m. to coincide with motion to dismiss.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

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

Thursday, February 6, 2020

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

**#5.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer
(con't from 10-10-19 order on stip. to cont. pre-trial entered 9/26/19)**

Docket 1

***** VACATED *** REASON: ORDER ON STIPULATION BETWEEN
PLAINTIFF AND DEFENDANT TO DISMISS ADVERSARY
PROCEEDING WITH PREJUDICE ENTERED 12/17/19**

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

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 6, 2020

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 5B Calendar**

Thursday, February 6, 2020

Hearing Room 5B

10:00 AM

8:18-10064 Skin Care Solutions, LLC

Chapter 7

Adv#: 8:18-01146 Marshack v. Naughton

#6.00 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 12-12-19 per order on stip. to cont. pre-trial conf. entered 11-14-19)

Docket 3

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION TO DISMISS ADVERSARY PROCEEDING ENTERED 2-05-20**

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, February 6, 2020

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, February 6, 2020

Hearing Room

5B

11:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

**#6.10 Motion to Dismiss Adversary Proceeding As To Frank Jakubaitis
(cont'd from 1-30-20 per order granting ex parte application to cont
defendants' motion to dismiss pursuant to FRCP 12(b)(6))**

Docket 183

***** VACATED *** REASON: CONTINUED TO 2-27-20 AT 11:00 A.M.
PER ORDER GRANTING EX PARTE APPLICATION TO CONTINUE
DEFENDANTS' MOTION TO DISMISS PURSUANT TO FRCP 12(b)(6)
AND THE PRE-TRIAL CONFERENCE ENTERED 2-05-20**

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

Thursday, February 6, 2020

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

**#7.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 12-5-19 per order approving stip. to cont. amended mtn to dsm and s/c entered 11-26-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-07-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 1-7-20**

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, February 6, 2020

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

**#8.00 Motion to Dismiss Adversary Proceeding
(con't from 12-05-19 per order approving stip. to cont. amended mtn to
dism and s/c entered 11-26-19)**

Docket 3

***** VACATED *** REASON: CONTINUED TO 5-07-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 1-07-20**

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, February 6, 2020

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.

**#9.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 12-5-19 per order approving stip to cont. s/c entered 11-25-19)**

Docket 1

***** VACATED *** REASON: ORDER APPROVING STIPULATION TO
CONTINUE STATUS CONFERENCE TO MAY 7, 2020 AT 11:00 A.M.
ENTERED 1/24/2020**

Tentative Ruling:

Tentative for 6/27/19:
Why no status report?

Party Information

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, February 6, 2020

Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

**#10.00 STATUS CONFERENCE RE: Contempt And/Or Defense Of Impossibility Re: Kenneth Gharib aka Kenneth Garrett aka Khosrow Gharib Rashtabadi and Freedom Investment Corporation, a Nevada Corporation In Contempt Of This Court and Imposing Sanctions
(cont'd from 1-30-20 per order continuing hrg on contemnor Kenneth Gharib's mtn for release from custody and to lift order of continuing civil contempt & s/c from 1-30-20 to 2-6-20 entered 1-21-20)**

Docket 0

Tentative Ruling:

Tentative for 2/6/20:
See #12

Tentative for 8/1/19:
See #17

Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

Tentative for 3/6/18:
No tentative.

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CONT... Kenny G Enterprises, LLC

Chapter 7

Tentative for 1/24/17:

This is the oft-continued hearing for status conferences concerning Kenneth Gharib's ("contemnor"), ongoing contempt, as well as a hearing on his motion late-filed on January 12 as #17 on calendar, styled as: "Notice of Motion and Motion to Dismiss the Sanction Order; Defense of Impossibility to Comply as of January 2017." The court repeats verbatim below the tentative decision from its September 14, 2017 hearings because, regrettably, nothing or almost nothing has changed. For those earlier hearings and conferences the court wrote:

"This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and, in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility defense. Mr. Gharib has been in custody under this court's order since May of 2015.

It is clear that the contemnor has the burden of proving impossibility. But Mr. Gharib has cited *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F. 2d 770 (9th Cir. 1983) for the proposition that impossibility is a complete defense, even if self-induced. *Id.* at 779-82 n. 7 quoting *United States v. Rylander*, 656 F. 2d 1313, 1318 n. 4 (9th Cir. 1981). As the Trustee has argued, this authority is somewhat dubious since the discussion in *Falstaff* is in dicta and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the

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question of self-induced impossibility, the Ninth Circuit has ruled subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

"In March of 2015, foreigner [sic] investors decided to terminate their contract and business with Gharib. Foreigner investors demanded and instructed Gharib to close all bank accounts of Best Entertainment Corp and Hayward Corporation in Bank of America and transfer the remaining balance to Office Corp. Gharib followed foreigner investors

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demand and instruction and he closed both bank accounts of Best Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

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

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apparently so indifferent to Mr. Gharib's ongoing incarceration so as to offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly ending in about 2014 and that, believing he was a successful businessman, she trusted him and allowed him to use her signature on various items and documents on things she apparently does not understand. [Transcript p. 57, line 16-19]. But, importantly, she testified she had absolutely no knowledge of either Office Corp or D Coffee Shop corporations or of any transfers therefrom [Transcript p. 75, line 6-7] and identified that her purported signature on several of said corporations' papers offered as exhibits by the Trustee were forgeries. [Transcript at p. 56, line 1-17] Interestingly, she also testified that Mr. Rushtabadi, the brother, requested by telephone just before the deposition that she leave the country. [Transcript pp. 22-23] Why she should leave her home on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid service just as Mr. Rushtabadi has reportedly done (at least so far).

In sum, the court is even less persuaded than before that Mr. Gharib does not have continuing access to funds and the ability to control funds, suing various shills, to purge the contempt either in part or in whole. His stories about what happened to the Hillsborough proceeds, about phantom investments in Iranian real estate, unnamed "foreigner investors" and the like, have absolutely no substance or corroboration and defy all credibility. The few details offered have proven to be either outright lies or very suspect, at best. In sum, Mr. Gharib's burden of proving impossibility has not been carried."

The only developments that could be construed as "new" do not help the contemnor's case. The Trustee now reports that his investigation reveals

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that the contemnor's brother, Steven Rushtabadi, has depleted all of the remaining money from the account maintained by D Coffee Shop Corporation's (a subsequent transferee from Office Corporation, itself a transferee from the debtor) at Bank of America in a series of over-the-counter withdrawals, presumably in cash. For a few weeks between January 11 through February 26, 2016 (See, Exhibits "2" and "3" to Trustee's Declaration) these withdrawals are supported by video evidence of Mr. Rushtabadi receiving the cash. But it appears that the incremental depletion of the account has actually gone on for months earlier in cash withdrawal amounts alternating between \$4500 and \$3500. Exhibit "1." But the court notes that all withdrawals appear to be below the regulatory threshold of \$10,000. The contemnor argues that it is impossible now to comply with the court's order because he is indigent and has no control over either his brother's or Ms. Firouzabadi's activities (or funds). The contemnor correctly points out that many of these transfers occurred after he was confined. But the court is not so naïve as to believe that transfers to corporations ostensibly controlled by a one-time girlfriend and a brother necessarily means that the contemnor has no ongoing control. At the very least it is the contemnor's burden to prove this to be the case and that burden is manifestly not carried here. The simple fact that Mr. Rustabadi refuses to cooperate by giving testimony, either in response to the Trustee's subpoenas or, conspicuously, even in support of his own brother's testimony which might relieve contemnor's incarceration, renders this whole line of excuse very dubious. Equally dubious is the argument that because the contemnor has allegedly not formally communicated with either the girlfriend or the brother in several months according to the contemnor's declaration and the records of the Metropolitan Detention Center, this must mean he has no ongoing control. But the court declines to take such an inference. Even less persuasive is the argument that the District Court has approved an *in forma pauperis* waiver of fees; all this means is that someone at the District Court believes what contemnor has said in an application, not that it is necessarily true. Rather, absent some more compelling and direct evidence to the contrary (such as declarations

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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 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

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argued, this authority is somewhat dubious since the discussion in *Falstaff* is in *dicta* and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the question of self-induced impossibility, the Ninth Circuit has ruled subsequently to *Falstaff* in *Federal Trade Commission v. Affordable Media, LLC*, 179 F. 3d 1228 (9th Cir 1999) that self-induced impossibility, particularly in the asset protection trust context, is not a defense to civil contempt or at least that the contemnor's burden of proof on the point is very high. *Id.* at 1239-41. Instead, the contemnor must still prove "categorically and in detail" why he is unable to comply. *Id.* at 1241 citing *Rylander*, 460 U.S. at 757, 103 S. Ct. 1548. Moreover, on that point and in that context the court is justified in maintaining a healthy skepticism, as did the *Affordable Media* court. *Id.* at 1242. See also *In re Marciano*, 2013 WL 180057*5 (C.D. Cal. Jan. 17, 2013); *In re Lawrence*, 251 B.R. 630, 651-52 (S.D. Fla. 2000); *United States v. Bright*, 2009 WL 529153*4-5 (Feb. 27, 2009).

Here, with even a mild degree of skepticism it is sufficient to find that Mr. Gharib has not met his burden of proving "categorically and in detail" why he is unable to purge the contempt. While this is not exactly an asset protection trust context as in *Affordable Media*, we have a near cousin of this phenomenon, i.e. multiple transfers to apparent sham corporations. As near as the court can understand it, Mr. Gharib argues that he has had no access or control over any funds since losing all of the \$11.9 million+ he claimed under penalty of perjury to own in November 2012 in filings made with this court. In previous briefs some of the subject proceeds from the Hillsborough sale were traced by the Trustee into two previously unidentified corporations, Office Corp and D Coffee Shop. In response to this evidence and in Mr. Gharib's own words:

"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

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Kenny G Enterprises, LLC

Chapter 7

Corp and Hayward Corporation in Bank of America and transfer the remaining balance to Office Corp. Gharib followed foreigner investors demand and instruction and he closed both bank accounts of Best Entertainment Corp in Bank of America. The remaining balance of approximately six hundred thousand dollars was transferred to Office Corp per foreigner investors' demand and instruction. Gharib never was the owner of funds or shareholder of Office Corporation. Gharib has no knowledge who owned stocks of Office Corp and foreigner investors never revealed to Gharib either. Shortly after, Gharib was detained in May 2015. While Gharib was in custody, trustee subpoenaed Office Corp bank account in Bank of America (see exhibit "26 and 27"). Office Corp's bank statements show the authorized signer was Mrs. Firouzabadi. Approximately three hundred thousand dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

Gharib's "Motion to Dismiss..." filed August 15, 2016 at pp. 4-5

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Kenny G Enterprises, LLC

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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 been carried.

Deny motion to dismiss. Continue for further evaluation conference.

Party Information

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CONT... Kenny G Enterprises, LLC

Chapter 7

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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#11.00 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 1-30-20 per order continuing hrg on contemnor Kenneth Gharib's mtn for release from custody and to lift order of continuing civil contempt and s/c from 1-30-20 to 2-6-20 entered 1-21-20)

Docket 457

Tentative Ruling:

Tentative for 2/6/20:
See #12

Tentative for 8/1/19:
No tentative.

Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

Tentative for 3/6/18:
No tentative.

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Tentative for 1/24/17:
See #15.

Tentative for 9/14/16:
See #6.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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#12.00 Motion For Release From Custody And To Lift Order Of Continuing Civil Contempt
(cont'd from 1-30-20 per order continuing hrg on contemnor Kenneth Gharib's mtn for release from custody and to lift order of cont. & to lift order of continuing civil contempt & s/c from 1-30-20 to 2-6-20 entered 1-21-20)

Docket 774

Tentative Ruling:

Tentative for 2/6/20:

This is Contemnor Gharib's, motion for release from custody and to lift the order of continuing civil contempt ("Motion"). This is also approximately the fourteenth status conference where the court has evaluated propriety of continued custody since Gharib was taken into custody May 12, 2015. The court notes that very little if anything has changed since the last hearing, except, of course, for the passage of another 6 months.

1. Background

A restatement of the background facts appears in order. On October 24, 2011, Kenny G Enterprises ("Debtor") filed a voluntary Chapter 11 petition. The debtor confirmed a plan January 9, 2013 which dealt with payment of rental income from a property in Hillsborough, CA. The plan notably did not call for a sale of the property. Nevertheless, Gharib engineered a sale of the Hillsborough property in spring 2013. On July 25, 2013, Creditor Mosta Karimabadi ("Creditor") filed an objection to Debtor's discharge on the grounds that "Debtor sold estate property without court approval in violation of 11 U.S.C § 362." [Mosta Obj. to Final Decree, ECF No. 116]. On August 14, 2013, the court converted the Debtor's case to

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Chapter 7. The court also issued its TRO restraining and enjoining Debtor, as well as Gharib and Freedom Investment, Inc. ("Freedom"), "from making any distributions to anyone . . . other than the appointed trustee, Thomas Casey, from the funds derived from the sale of the [Hillsborough property] . . . now being held by Freedom." [Order Denying Debtor's Mot. for Final Decree, ECF No. 125]. Debtor was also ordered to transfer all funds from the sale of the Hillsborough property to the Trustee. Later that day, at about the time the order was entered, instead of transferring the funds to the Trustee, Gharib went to his bank and requested a cashier's check of \$1,420,043.70. Motion for Contempt, ECF No. 272. Gharib thereupon transferred the funds through a series of shell corporations solely controlled by him.

On March 23, 2015, this Court entered an order holding Gharib and Freedom in contempt and imposed sanctions of \$1,420,043.70 plus \$1,000 per day after March 23, 2015. [Order of Contempt and Imposing Sanctions, ECF No. 362]. Gharib did not pay the sanctions. On May 12, 2015 the court found Gharib in continuing contempt and ordered that the U.S. Marshal Service take him into custody and detain him until he purged the contempt by paying sanctions. [Order of Civil Contempt and Body Detention, ECF No. 408]. After more than four years, Gharib has still refused to purge the contempt and remains in custody. The court has held periodic status conferences in the ensuing years (on average 4-6 months between each) in order that the continuing contempt, efficacy of the continued confinement and Gharib's impossibility defense might be evaluated. For the reasons explained below, nothing has changed:

A. Divested Jurisdiction due to Pending Appeal in District Court

Trustee argues that this court has been divested of jurisdiction over the issue of Gharib's release from custody. The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a

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bankruptcy court of jurisdiction "over those aspects of the case involved in the appeal." *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 967 (2007) (quoting *Neary v. Padilla (In re Padilla)*, 222 F.3d 1184, 1190 (9th Cir. 2000)). This rule is "designed to avoid the confusion and waste of time that might flow from putting the same issues before two courts at the same time." *Padilla*, 222 F.3d at 1190. The bankruptcy court retains jurisdiction over all other matters that it must undertake "to implement or enforce the judgment or order," although it "may not alter or expand upon the judgment." *Sherman*, 491 F.3d at 967.

On February 12, 2019, this Court denied Gharib's motion for release from custody. [Corrected Order Denying Contemnor's Mot. for Release from Custody, ECF No. 729]. Gharib then filed an appeal to the District Court of this Court's order denying his release from custody ("Appeal"). [Notice of Appeal, ECF No. 730]. The matter was fully briefed on August 28, 2019 and the case is presently before Judge Wu. As of this writing the District Court had not issued a judgment or order regarding Mr. Gharib's appeal.

Although this Motion and the Appeal both involve the issue of Gharib's release from custody, they are procedurally distinct. The issue in the Appeal is whether this court abused its discretion by denying Gharib's release on February 12, 2019. This Motion concerns his present request to be released from custody and does not involve the Appeal. There would be no confusion or wasted time by deciding this Motion. Thus, this court has not been divested of jurisdiction to rule on this Motion. See *In re Castaic Partners II, LLC*, 823 F.3d 966, 969 n.3 (9th Cir. 2016). Further, this court is under an ongoing duty to periodically evaluate the contemnor's incarceration at reasonable intervals. See *United States v. Lippitt*, 180 F.3d 873, 879 (7th Cir. 1999).

B. Civil Contempt

A contempt sanction is civil if it is remedial and for the benefit of the

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complainant. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911). Many civil contempt proceedings have resulted not only in the imposition of a fine, payable to the complainant, but also in committing the defendant to prison. *Id.* at 441-42. Imprisonment in such cases is not inflicted as a punishment, but it is intended to be remedial by coercing the defendant to do what he had refused to do. *Id.* at 442; see also *Int'l Union v. Bagwell*, 512 U.S. 821, 827 (1994) (reasoning that civil contempt sanctions are coercive and avoidable through obedience). 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. A contemnor may be held indefinitely until he complies or until he establishes that compliance is not possible. *Armstrong v. Guccione*, 470 F.3d 89, 111 (2d Cir. 2006).

A civil contempt sanction may transform into a punitive sanction in two circumstances. First, if there is no substantial likelihood of the contemnor's compliance, then commitment loses its coercive power. *Lambert v. Montana*, 545 F.2d 87, 90 (9th Cir. 1976). Second, if it is impossible for the contemnor to purge his contempt then neither the moving party nor the court has any reason to proceed with the civil contempt action. *U.S. v. Rylander*, 460 U.S. 752, 757 (1983). Each of these is evaluated below:

1. Substantial Likelihood of Compliance

Commitment or incarceration loses its coercive power when there is no substantial likelihood that continued commitment would accomplish the purpose of the order on which the commitment was based. *Lambert*, 545 F.2d at 90. But a contemnor's insistence that he will never talk, or confinement for a length of time, does not automatically satisfy a showing of "no substantial likelihood." *Id.* Each case must be decided on an independent evaluation of

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all the facts. Age, state of health, and length of confinement are factors to be weighed, but the critical question for the court is whether confinement will serve any further coercive purpose. *Id.*

Gharib primarily argues that the length of his incarceration warrants his release. But length of confinement is only one of the factors that this court must weigh. This Motion states "all of the other factors listed above only weigh more heavily in Mr. Gharib's favor after the passage of another six months in jail" but does not provide any evidence. [Mot. at p.5, Ins.6-7]. It is true that Gharib is "now older than he was six months ago" but the Motion fails to indicate how that justifies his release. *Id.* at Ins.12-13. Gharib contends that his incarceration for nearly five years for \$1.4 million stands in "stark contrast" to other examples when courts have found civil confinement was no longer coercive. [Mot. at p.4, Ins.13-15]. But Gharib's argument regarding the length of his incarceration is flawed in several respects. First, the majority of Gharib's cited cases are from outside of the Ninth Circuit. See generally *Northeast Women's Ctr. v. McMonagle*, 939 F.2d 57 (3d Cir. 1991); *Schwarz v. ThinkStrategy Capital Mgmt. LLC* 2017 WL 5558682 (S.D.N.Y. May 9, 2017); *Commodity Future Trading Comm'n v. Wellington Precious Metals, Inc.* 950 F.2d 1525 (11th Cir. 1992); *In re Grand Jury Subpoena 87-A (MIA) Served upon Constant*, 691 F. Supp. 1400 (S.D. Fla. 1988); *Armstrong v. Guccione*, 470 F.3d 89 (2d Cir. 2006); *In re Lawrence*, No. 05-20485-CIV, 2006 WL 8436247 (S.D. Fla. Dec. 13, 2006).

Second, although cases from other jurisdictions give this court insight into whether further confinement serves a coercive purpose, these cases are factually distinguishable from this case and do not persuade this court of the need for Gharib's release. See generally *McMonagle*, 93 F.2d at 59-61 (reasoning that the issue of incarceration is moot since the contemnor, a leader of a group of anti-abortion protestors engaged in "non-peaceful activity," had been properly held in contempt and unconditionally released); *Wellington*, 950 F.2d at 1528 (affirming the district court's order of civil contempt for a contemnor who refused to disgorge \$2.8 million); *Armstrong*,

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470 F.3d at 111 (reasoning that contemnor was motivated by greed and willing to suffer time in jail in the hope of possessing the money, but remanding so that a different district court judge could look at the confinement with "a fresh look by a different pair of eyes"). Gharib parenthetically states the length of the confinement for each case, without providing insight on the respective court's justification for the contemnor's release. But mere assertion of the length of time and amount of money involved does not strengthen his argument. This court must make a factually-based, independent evaluation of the continued coercive effect (if any) of Gharib's confinement that goes beyond a mere time stamp.

Furthermore, Gharib relies on *Schwarz* and *Constant*, where the contemnors were released. See *Schwarz*, 2017 WL 5558682 at *2; see also *Constant*, 691 F. Supp. at 1402. But these contemnors' behavior differs greatly from Gharib's. In *Schwarz*, the contemnor was released because he produced evidence of his repeated efforts to contact his brother and obtain access to a Swiss bank account. 2017 WL 5558682 at *2. The court found that future incarceration would not be coercive because of the brother's unresponsiveness. *Id.* Here, although Gharib's brother, Mr. Rush-Tabadi ("brother"), has reportedly proven difficult to contact, Gharib provides no evidence of his attempts to contact his brother. He merely argues that his brother's letter, stating that the money was spent and that he will not return to the United States, is alone sufficient evidence to justify lack of future compliance. [Mot. at p.5, Ins.16-20]. In *Constant*, the contemnor was incarcerated for three months after refusing to testify as a witness, but the court released him after finding that he had a genuine fear that his testimony would endanger his family. 691 F. Supp. at 1402. Gharib's circumstances are very different. Gharib is not a witness refusing to testify. He is a debtor who owes \$1.4 million to his bankruptcy estate, maintains control over the money, but has repeatedly refused this court's order to turn over the money. Moreover, as reported by the Trustee, Gharib has steadfastly refused to provide any information on where the money went, or how the brother might

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be contacted.

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Gharib contends that this court should take into consideration the length of his civil confinement compared to the statutory maximum for criminal contempt. Gharib relies on *Lambert* and *Lawrence* to support his claim. The *Lambert* court acknowledged that the contemnor's incarceration raised constitutional concern. *Lambert*, 545 F.2d at 91. But the court also emphasized that if the confinement is no longer coercive, then the contemnor "should be released, since, to be constitutional, his confinement must bear some reasonable relationship to the purpose for which he was committed." *Id.* (emphasis added). This court agrees. Gharib's confinement bears a reasonable relationship to this court's order for Gharib to return the \$1.4 million to his bankruptcy estate and continues to serve a coercive purpose. Gharib further relies on *Lawrence*, where the court mentioned that the contemnor's six-year incarceration was longer than most of imprisonment for serious federal crimes. *Lawrence*, 2006 WL 8436247 at *2. But this court has already discussed the inapplicability of *Lawrence*. This court has previously stated that, "*Lawrence* defines the standard of whether there is a 'realistic possibility' that continued incarceration will yield a positive result." [*In re Kenny G. Enterprises, LLC*, No. 8:11-BK-24750-TA, 2019 WL 508774, at *4 (Bankr. C.D. Cal. Feb. 7, 2019)]. This court found that there was a reasonable possibility that Gharib will "recalculate that the continued utility of evasion and denial is no longer a paying proposition." *Id.* Gharib has failed to produce any additional evidence since this court's previous opinion to indicate otherwise.

Gharib merely argues that his continued refusal to comply with this court's order means that there is no substantial likelihood of his compliance, ever. But Gharib's lack of evidence, paired with the mere assertion of the length of his incarceration, is insufficient to justify his release. Thus, nothing indicates that the civil contempt sanction is no longer coercive. What this question amounts to is a contest of wills, whether this court will tire of the effort and release Gharib without his producing *anything new* except to argue that the mere passage of time has vindicated his position. Gharib would have

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strengthened this argument considerably by cooperating with the Trustee and explaining what happened to the money and why it is now out of his reach and/or why he has no contact with his brother, or no means of contacting that he will share with the Trustee, such that continued confinement is unlikely to be helpful. [see *Impossibility* argument below]. But, to simply argue, as appears the case here, that Gharib remains defiant and will never cooperate does not provide any justification for release.

2. **Defense of Impossibility**

In a civil contempt proceeding, if a court finds that a contemnor could at some point in the past have complied with a court order, then the court should assume a present ability to comply. See *Rylander*, 460 U.S. at 757; see also *Maggio v. Zeitz*, 333 U.S. 56, 75 (1948). Where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action. *Rylander*, 460 U.S. at 757. Gharib briefly argues in this Motion that his inability to comply with this court's order supports a defense of impossibility. Generally, a party's inability to comply with a judicial order constitutes a defense of impossibility to the charge of civil contempt. *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). In raising this defense of impossibility, however, the contemnor bears the burden of producing evidence to establish his present inability. *Rylander*, 460 U.S. at 757. In fact, the contemnor must show "categorically and in detail why he is unable to comply." *Affordable Media*, 179 F.3d at 1241 (quoting *NLRB v. Trans Ocean Exp. Packing, Inc.*, 473 F.2d 612 (9th Cir. 1973)).

Gharib has not met his burden. Instead of producing evidence to support his present inability, Gharib narrowly construes the language of *Maggio* in his favor and merely states that a "denial of possession is given credit after demonstration that a period in prison does not produce the goods." *Maggio* 333 U.S. at 76. But mere denial is not enough. The "fact that

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he has been under the shadow of prison gates may be enough, coupled with his denial and evidence [of present conditions or intervening events which corroborate him], to convince the court that his is not a willful disobedience which will yield to coercion." *Id.* (emphasis added). This court is not convinced that Gharib's refusal is unyielding, however.

The only evidence to support Gharib's claim of inability is a letter by his brother stating that the money was spent on "a series of short movie which was not completed due to the lack of funds and [his] severe illness." [Order Placing Rush-Tabadi Correspondence on Docket, ECF No. 750]. The brother does not provide any details to support his claims. If this is true, and the money is gone, then this is a major factor. But to grant this Motion would require this court to believe the brother without any corroborating evidence whatsoever. As this court has previously stated, we do not know if the brother is lying and/or if Gharib is merely using his brother's statement as "evidence" that the money is out of reach. Gharib dug himself this self-induced hole of inability. But he did not get here alone. Gharib transferred the \$1.4 million to accounts where his brother was an authorized signer. It is not implausible that the brother has direct knowledge of the location of the \$1.4 million. At a bare minimum, Gharib can attempt to contact him. If the money is truly spent, and Gharib cannot access it, then this court must reevaluate whether there is a coercive purpose in his incarceration. But this Court requires him to provide *evidence* to corroborate his alleged inability. Anything would be helpful in this regard: receipts, cancelled checks, ledgers, naming of others involved in production of the alleged movies, at least something.

Yet Gharib refuses. And he refuses, reportedly, to explain how his brother got the money in the first place or whether this story is in lieu of, or supplemental to, the story about investing in Iranian land. As this court has previously stated, "Gharib could clarify, if he wanted to, but he doesn't want to. That makes [the court] very suspicious as to why he doesn't want to." [Transcript Regarding 08/01/19 Hearing, ECF No. 758]. Maybe it is because Gharib truly has control over the \$1.4 million and does not want to forfeit the

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money to his bankruptcy estate. Maybe it is because Gharib has yet to value his liberty more than \$1.4 million. Maybe it is because Gharib maintains hope that Judge Wu, or any judge that hears a future appeal, will reverse the ruling of this court. It is ultimately unclear why Gharib continuously refuses to comply, but his blanket statement of inability cannot suffice.

Obviously, Gharib cannot do what cannot be done. But for this court to believe his claim of impossibility, he must demonstrate some effort and provide evidence of his attempt. Thus, Gharib fails to meet his burden to provide evidence of impossibility and this Motion should be denied.

C. Nazarzai v. Orange County

In Gharib's reply brief, he argues that his release is mandated by the decision in a recent case called *Nazarzai v. Orange County*, 2019 WL 7372952 (C.D. Cal. Dec. 30, 2019). In *Nazarzai* (a non-bankruptcy case), the issue before Judge Guilford was whether a civil contemnor's six-year confinement for failure to pay \$360,000 was a violation of his federal due process rights. Judge Guilford ruled that contemnor should have been released at least two years prior when "it bec[ame] unclear whether there [was] an ability to pay." *Id.* at *4.

Superficially, this case might seem to be somewhat factually similar. However, a closer examination on the most critical facts (amount of money and time spent incarcerated) reveals significant differences. As noted, in *Nazarzai*, the amount sought for turnover was approximately \$360,000, whereas here, the amount is more than four times greater. Also, in *Nazarzai*, the contemnor had been incarcerated for six years, whereas here, Gharib is not quite at five years. Although Judge Guilford found that *Nazarzai* should have been released after four years, when it became unclear whether *Nazarzai* had the ability to comply, such a decision was only reached after considering the unique circumstances of that case (including Nazarzai's

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attempted suicide).

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Obviously, the amount of money Gharib is believed to be hiding, and the amount of time he has served are extremely relevant factors and are different from those facts in *Nazarzai*. Gharib argues that considering the amount of money owed in determining whether to keep Gharib incarcerated would amount to a debtor's prison. Indeed, Judge Guilford warned of that possibility. However, the amount of money in question is not irrelevant because it is part of the calculation Gharib must be making in determining whether to divulge the whereabouts of the money. Gharib seems to argue that *Nazarzai* can be broadly read for the proposition that once it becomes unclear whether he can comply, he must be released. To that end, Gharib points out that his brother (allegedly) has already spent the money on a movie venture, which makes Gharib's ability to comply with the turnover order uncertain at best.

This argument fails because Gharib has not taken any affirmative steps to even try to comply with the turnover order. In the status report filed on February 3, 2020, Trustee reports that Gharib was offered the opportunity to present *any* relevant information, even off the record and in a confidential setting. Gharib refused the offer. If Gharib had taken Trustee up on his offer, then we might indeed require a closer examination of whether his ability to comply with the order has become sufficiently uncertain as to warrant his release. But implicit in this argument is that this court should simply accept the brother's unsworn statements at face value and absent any corroboration whatsoever. The court also notes that the brother conveniently imparts that he has left the USA and does not intend to return. To accept such a story at face value is inappropriate as analyzed above. In short, *Nazarzai* does not really move the needle in Gharib's favor; if anything, it works against him because it shows the continued incarceration indeed *is having an effect* since, if nothing else, it prompted the brother to write to the court with a brand new story about what became of the money.

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Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

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8:20-10178 John Albert Davies

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#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

HILL AND DALE, LLC
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 2/11/20:

Grant without extraordinary relief because no real basis is shown.

Party Information

Debtor(s):

John Albert Davies

Represented By
Ivan M Lopez Ventura

Movant(s):

HILL AND DALE, LLC

Represented By
Stephen C Duringer

Trustee(s):

Richard A Marshack (TR)

Pro Se

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8:18-11713 Marlene C. Lewis

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK, N.A.
Vs.
DEBTOR

Docket 112

Tentative Ruling:

Tentative for 2/11/20:

Grant. Appearance is optional.

Party Information

Debtor(s):

Marlene C. Lewis

Represented By
Joshua L Sternberg

Movant(s):

Wells Fargo Bank, N.A., as trustee,

Represented By
Daniel K Fujimoto
Robert P Zahradka
Caren J Castle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTORS

Docket 204

Tentative Ruling:

Tentative for 2/11/20:
Grant unless APO.

Party Information

Debtor(s):

Dale Garfield Knox

Represented By
Andy C Warshaw

Joint Debtor(s):

Cheryl Lynn Knox

Represented By
Andy C Warshaw

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:19-13000 Dale Grabinski

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 48

Tentative Ruling:

Tentative for 2/11/20:
Deny if Movant confirms Debtor is current.

Party Information

Debtor(s):

Dale Grabinski

Represented By
Christopher J Langley

Movant(s):

JPMorgan Chase Bank, National

Represented By
Nancy L Lee
Kristin A Schuler-Hintz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-13420 James Swaner and Allyson Swaner

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

HSBC BANK USA
Vs.
DEBTORS

Docket 38

Tentative Ruling:

Tentative for 2/11/20:

Continue for parties to do an accounting. If the funds behind the uncashed checks are still on deposit, it should be possible to resolve this. However, the court takes a dim view of post-confirmation defaults.

Party Information

Debtor(s):

James Swaner

Represented By
Tina H Trinh

Joint Debtor(s):

Allyson Swaner

Represented By
Tina H Trinh

Movant(s):

HSBC Bank USA, National

Represented By
Angie M Marth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-13462 Jill Espina Cabrera

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

BAYVIEW LOAN SERVICING, LLC
Vs.
DEBTOR

Docket 30

Tentative Ruling:

Tentative for 2/11/20:
Grant. Why the numerous cases?

Party Information

Debtor(s):

Jill Espina Cabrera

Represented By
Edward A Bauman Jr

Movant(s):

BAYVIEW LOAN SERVICING,

Represented By
Edward G Schloss

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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8:20-10001 John Michael Calicchio

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

THE BANK OF NEW YORK MELLON TRUST COMPANY
Vs.
DEBTOR

Docket 8

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOVANT'S MOTION FOR RELIEF FROM
AUTOMATIC STAY FILED 2-05-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Michael Calicchio

Pro Se

Movant(s):

The Bank of New York Mellon Trust

Represented By

Nancy L Lee

Kristin A Schuler-Hintz

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:20-10181 Marco Brito

Chapter 13

#8.00 Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay as the Court Deems Appropriate

Docket 11

Tentative Ruling:

Tentative for 2/11/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Marco Brito

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-10797 Timothy Morgan Johnson

Chapter 7

**#9.00 Order To Show Cause Re: Dismissal For Failure To Comply With Rule 1006(B) -
Installment (\$100.00 Due On 1/02/20)**

Docket 0

Tentative Ruling:

Tentative for 2/11/20:
Dismiss.

Party Information

Debtor(s):

Timothy Morgan Johnson	Pro Se
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Trustee(s):

Richard A Marshack (TR)	Pro Se
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8:19-12516 Ultimate Brands Inc

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#10.00 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 1-07-20)

Docket 0

Tentative Ruling:

Tentative for 2/11/20:
Status?

Tentative for 1/7/20:
Same.

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

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Ultimate Brands Inc

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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 paid." *Id.* at 3.

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*, 332 B.R. 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

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(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 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

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Ultimate Brands Inc

Chapter 7

financial and operational documents to Trustee:

- i) Franchise Transfer Agreement;
- ii) Trademark Assignment and Notice of 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;
- 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.

Party Information

Debtor(s):

Ultimate Brands Inc

Represented By
Julie J Villalobos

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CONT... Ultimate Brands Inc

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Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang

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8:19-12516 Ultimate Brands Inc

Chapter 7

#11.00 Amended Motion For Sanctions/Disgorgement Requesting Imposition Of Monetary Sanctions Pursuant To FRBP 9011

Docket 318

***** VACATED *** REASON: OFF CALENDAR - PER ORDER
APPROVING STIPULATION RE: DISMISSAL OF CREDITORS'
AMENDED MOTION REQUESTING IMPOSITION OF MONETARY
SANCTIONS PURSUANT TO FRBP 9011 ENTERED 2-05-20**

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

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8:16-13504 Custom Cut Abrasives, Inc.

Chapter 7

#12.00 Trustee's Final Report And Application For Compensation:

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

GOE & FORSYTHE, LLC, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

UNITED STATES BANKRUPTCY COURT, CLERK OF THE COURT COSTS

FRANCHISE TAX BOARD, ADMINISTRATIVE TAX CLAIM NO.16

IMS, FIELD REPRESENTATIVE/ADJUSTER FOR TRUSTEE FEES

Docket 101

Tentative Ruling:

Tentative for 2/11/20:
Allow as prayed. Appearance optional.

Party Information

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

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8:16-13504 Custom Cut Abrasives, Inc.

Chapter 7

#13.00 Application for Second And Final Compensation And Reimbursement Of Expenses For Period: 6/13/2019 to 1/9/2020:

GOE & FORSYTHE, LLP, CHAPTER 7 TRUSTEE'S ATTORNEY

FEE:	\$59,366.50
EXPENSES:	\$1,090.01

Docket 104

Tentative Ruling:

Tentative for 2/11/20:

The application states: "By this Application, the Firm is requesting that the Court approve the sum of \$6,146.00 for professional services rendered as general counsel to Trustee and \$250.05 in costs for a total of \$6,396.05. The Firm also requests approval of the amounts awarded pursuant to the Fee Order for a total award of fees of \$59,366.50 and expenses of \$1,090.01. As noted above, pursuant to agreement with Trustee, the Firm will reduce the requested additional payment to \$8,700.92 in fees and \$232.50 in expenses." (Application, p. 8)

There is some difficulty getting the figures in the fee application to add up. According to this application, this court approved fees in the amount of \$59,366.50 and \$857.51 in expenses in the first interim fee application on July 10, 2019 (Dkt. # 87). However, a look at the order reveals that this court approved fees of \$53,476.50 and \$857.51 in expenses. The expenses are consistent, but the fees are significantly different.

The discrepancy is likely explainable as a typo in the application because the application goes on to say that since the first interim application, the firm has incurred an additional \$6,146 in fees and costs of \$250.05. Adding the \$53,476.50 from the order on the first interim fee application with the additional \$6,146 in subsequently incurred fees, the result is \$59,622.50,

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which is actually a little more than the \$59,366.50 given in the fee application.

The attached time records show that the balance of prior invoices was \$13,369.12. With the added balance of \$6,146.00, the new total comes out to \$19,515.12. The application states that there was an agreement to provide for an \$11,000 discount. \$19,511.12 with the \$11,000 discount comes out to \$8,511.12. However, the firm is requesting \$8,700.92 in fees. The court is uncertain how this number was reached. Similarly, the additional expenses requested are \$232.50 (reduced by agreement?). In the attached records, the expense figure is consistently given as \$250.05.

In sum, the numbers are difficult to track and it is uncertain what the firm is requesting in this application. It seems like there are some relatively minor discrepancies in the calculations of the fees that could probably be easily explained through a supplemental declaration. However, at the end of it, the court is left uncertain what the firm would like the order awarding fees to say. This could be and should be clarified in a supplemental declaration. The fee application has not drawn any objections and appears complete aside from requiring an accompanying client declaration and biographical information of the professionals.

No tentative.

Party Information

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

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8:18-10912 Paul Yong Kim

Chapter 7

#14.00 Trustee's Final Report And Application For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

RINGSTAD & SANDERS LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

Docket 99

Tentative Ruling:

Tentative for 2/11/20:
Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Paul Yong Kim

Pro Se

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson

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8:13-11495 Point Center Financial, Inc.

Chapter 7

#15.00 Hearing To Determine An Appropriate Order Complying With The Ninth Circuit's Directive

Docket 1777

Tentative Ruling:

Tentative for 2/11/20:

In re Point Center Financial, Inc., #15 @ 11:00 a.m. Feb. 11, 2020

The court has newly-found sympathy with Lewis Carroll's character Alice in "Alice's Adventures in Wonderland."

On October 13, 2016, the Court entered its Order on Brewer Group's ("Brewer's") Claim of Lien as Pertains to Fee Award (the "Claim of Lien Order") [Dkt. #1457]. Richard M. Kipperman, as the post-judgment limited receiver in aid of execution for the "Brewer Group," appealed the Claim of Lien Order to the United States District Court for the Central District of California, which affirmed. Brewer appealed the District Court's order to the United States Court of Appeals for the Ninth Circuit, which, on July 22, 2019, vacated the District Court's order and remanded it "with instructions to send the case back to the bankruptcy court for it to clearly explain why Brewer did or did not sustain the latter's burden of proof to show that the PCF-CalComm assignment occurred before Brewer's March 16, 2012 judgment lien." This is the hearing to determine an appropriate order complying with the Ninth Circuit's directive. This narrow issue is contested by Brewer and the Chapter 7 Trustee, Howard Grobstein ("Trustee").

1. Basic Facts

Brewer holds five separate liens against Debtor, Point Center Financial, Inc.'s ("PCF's") property. The first is the lien arising by Dynalectric,

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on March 16, 2012, serving an Order to Appear for Examination (the "ORAP"), ordering PCF to appear for a judgment debtor's examination. See CCP §708.110(d). Also, on March 16, 2012, Brady, Dynalectric, and Brewer (the entity, not group) each filed a Notice of Judgment Lien with the California Secretary of State creating a lien on certain categories of personal property. On April 18, 2012 Division 8 filed its Notice of Judgment Lien. The Management Assistance Agreements were drafted by Dale Martin, PCF's in-house attorney. Mr. Martin forwarded the draft agreements to Dan Harkey by an email on March 15, 2012. Through these Management Assistance Agreements, PCF assigned its right to management and servicing fees to CalComm Capital, Inc. ("CalComm") At all relevant times, Harkey was a principal of both PCF and CalComm. The question before the court is whether the rights to management fees were assigned before or after the above liens attached March 16, 2012.

2. When Did the Assignment from PCF to CalComm Occur?

It seems uncontested that Brewer has the burden of proof to demonstrate that the assignment from PCF to CalComm occurred after March 16, 2012 thereby allowing its liens to attach. Trustee argues Brewer must do so by something higher than just preponderance of the evidence. In support of this argument, Trustee cites *Marinelarena v. Sessions*, 869 F.3d 780, 789 (9th Cir. 2017) for the proposition that, "[i]t is well established that the party who bears the burden of proof loses if the record is inconclusive on the crucial point." However, the court does not read the quoted language to mean that Brewer must prove that the assignment occurred after March 16, 2012 by anything other than a mere preponderance of the evidence. Therefore, in the court's view, proof by preponderance of the evidence should remain the standard. But even on this lesser standard it is not at all clear that Brewer wins.

Brewer's main argument is that the email from Mr. Martin to Harkey is clear evidence that the assignment occurred after March 16, 2016. In support

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of this assertion, Brewer argues that the language of the email demonstrates that the Management Assistance Agreements were still in draft form and thus were not yet ready to be executed. Specifically, Brewer points to the language where Martin expresses some doubt about backdating the Management Assistance Agreements to August 2010. Brewer argues that, if assignment agreements were meant to be in final form, why would Martin be reconsidering the dates? Brewer does not rely solely on the language of the email: they also point out that Mr. Martin himself testified during a deposition that what he prepared and sent to Harkey in the email were drafts of the Management Assistance Agreements, and they were completed by Harkey and Jeffrey Benice at some point thereafter.

Brewer cites the following exchange in Martin's deposition taken from page 41 line 15 to page 42, line 18:

Q. You provided a draft to Mr. Harkey?

A. A draft, yes.

Q: And did you finalize it for him at his request?

A. No.

Q. Do you know who did?

A. Mr. Benice and Mr. Harkey finalized it, as far as I know, yeah.

Q. Do you have any recollection of when, during your employment, that would have taken place?

A. No, I don't. It may have taken place - - I don't recall.

Q. You left in September of 2013. Was it sometime during 2013?

A. Yes. Bear with me. It could have been late 2012, early 2013. I don't

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Point Center Financial, Inc.
recall.

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Q. Was it before or after Point Center filed a bankruptcy petition?

A. Before.

Q. You are clear about that?

A. Yes. At least what I did.

Q. You provided the draft before the petition was filed?

A. Yes. I believe so. When was the petition?

Q. I believe it was February or so of 2013.

A. February of 2013, yes, I believe it was. Yes.

Q. But Mr. Harkey asked you to draft that agreement; correct?

A. Yes.

Brewer then cites a later portion of the deposition transcript where the following exchange takes place (emphasis added):

Q. The documents, although they bear the date of August 1, 2010, were obviously signed at some point after March of 2012; correct?

A. Correct.

Q. Do you have a recollection of when that exactly took place, when Mr. Harkey signed the documents?

A. No, I do not. (Martin Transcript, 51:23 – 52:5)

Brewer also points out that Harkey himself testified in another case that these assignments were drafted in response to Brewer's allegedly wrongful attempts to collect on its judgment. Brewer argues that these

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'collection attempts' occurred in the Spring and Summer of 2012, which, Brewer contends, further helps establish the timeline. But the problem here is that Harkey's words are very vague. Might the 'collection' attempts in Harkey's layman's terms have meant the entry of the judgment, or earlier? Since we also know from other evidence that Harkey contemplated assignment from at least December of 2011, it becomes very difficult to pinpoint anything.

Finally, Brewer argues that Harkey's actions are consistent with a finding that the assignment occurred after March 16, 2012. In support of this contention, Brewer notes that Mr. Harkey testified that on April 26 and 27, 2012 he caused a related entity, National Financial Lending (NFL) to transfer investor account funds into a new trust account standing in the name of CalComm. Until that date, he permitted the funds to remain in NFL accounts. In May 2012 PCF filed suit against the Brewer group for interference with contractual relationships. Brewer argues that If Mr. Harkey had transferred the right to receive payments from PCF to CalComm, he would have advised the persons receiving demand letters from the Brewer group that their payments were to no longer go to PCF but to CalComm, making the suit unnecessary, or he would have included CalComm as a plaintiff, but this did not occur. However, this is a rather large inference based on very little.

The Trustee argues that there is simply no credible evidence to show that the assignment occurred after March 16, 2012. Trustee argues that the transcript of Martin's deposition testimony shows that Martin was unsure of the timeline and, therefore, his testimony is, at best, speculative. To that end, Trustee argues that the excerpt of the transcript quoted above is incomplete insofar as it cuts off immediately prior to Martin expressing his uncertainty. When discussing when Harkey and Benice finalized the assignment documents, the following exchange took place:

Q: "Okay. Do you have any recollection of when, during your employment, that would have taken place?"

A: "No, I don't. It may have taken place – I don't recall." (Martin

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Transcript, 41:23–42:1).

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Later, Martin was questioned about another of the agreements, and the following exchange occurred, part of which is quoted above:

Q: "Do you have a recollection of when that exactly took place, when Mr. Harkey signed the documents?"

A: "No, I do not."

Q: "Do you recall whether Mr. Harkey provided signed copies of them to you after he had signed them?"

A: "I don't remember. He could have. I don't recall. I don't recall."
(Martin Transcript, 52:2-9).

Thus, Trustee argues that, although it may appear that Martin's testimony establishes a timeline beneficial to Brewer's position, the transcript, when read in proper context, reveals that Martin was far from certain about the dates discussed, and so his testimony is of limited, if any usefulness.

However, the main thrust of Trustee's argument appears to be that, under his interpretation of California law, the assignment was likely effective as early as December 2011. In support of this argument, Trustee argues that Harkey had already made up his mind (i.e. formed a manifest intent) to assign PCF's rights to CalComm well before March 16, 2012. Trustee submits that under the governing law of California, Cal. Civ. Code § 1052, "A transfer may be made without writing, in every case in which a writing is not expressly required by statute." Further, in *Hearn Pac. Corp. v. Second Generation Roofing, Inc.*, 247 Cal. App. 4th 117, 149 (2016), the court stated "Hearn cites no authority holding the lack of a counterparty's signature is fatal to an assignment. In the absence of a statute or a contract provision to the contrary, there are no prescribed formalities that must be observed to make an effective assignment. It is enough if the assignor has, in some fashion, manifested an intention to make a *present* transfer of his rights to the

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assignee. Even oral assignments may be valid." (italics added; citations and quotations omitted) See also: *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*, 46 Cal. 4th 993, 1002 (2009) ("An assignment requires very little by way of formalities and is essentially free from substantive restrictions. In the absence of a statute or a contract provision to the contrary, there are no prescribed formalities that must be observed to make an effective assignment. It is sufficient if the assignor has, in some fashion, manifested an intention to make a *present* transfer of his rights to the assignee.") (internal citations, punctuation marks, and quotations omitted; italics added). The court notes that in both authorities there is still a requirement that the assignment be a *present intention*, not merely a future possibility. Of course, we are not assisted in that the language of the actual assignment document Harkey signed suggests a date August 1, 2010 which is almost certainly too early.

Trustee is arguing that under California law, an assignment is valid without a written instrument even when the assignment is between two entities owned and controlled by the same person. All that is required is a manifest intent to *presently* assign rights to another. Trustee argues that Mr. Martin's testimony is illuminating on this point. Martin was asked when Harkey first approached him about preparing the agreements. Martin testified that it was probably within a month prior to Martin's March 15, 2012 email. (Martin Transcript, 46:9-14) Trustee argues that this shows that Harkey must have made his decision to assign PCF's rights to CalComm at some point before approaching Martin. Trustee also argues that recently discovered evidence in the form of metadata taken from Word files shows that some management assistance agreements assigning PCF's right to fees from several LLCs to CalComm were created as early as December 2011. Thus, Trustee concludes, Martin's testimony and the newly discovered metadata evidence establishes that Harkey obviously formed an intent to assign PCF's right to CalComm at some point prior to March 16, 2012. Of course, whether this was a *present* intent to assign, or merely something preliminary to be effectuated

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later, is left frustratingly vague.

Questions of evidence and estoppel aside, the court has, in the past, expressed doubt about the legitimacy of the legal theory at the heart of Trustee's argument. The court notes that the cases cited by Trustee did not involve an individual assigning rights from one company he owns and controls to another company he owns and controls, as is the case here. Trustee appears to be arguing that the law would permit an individual to assert an effective date of an assignment by simply citing a conversation he had with himself on a given date. It might be doubted this was the type of action that the California legislature had in mind when it drafted Cal. Civ. Code §1052. It is also doubtful that courts that have interpreted the rules governing unwritten assignments intended their interpretations to be used in this manner. If there are cases where the court has found such a legal theory to be viable, Trustee has failed to cite them. However, Brewer has also failed to cite any authority where Trustee's interpretation was rejected.

The court is aware that such an interpretation could be abused by self-serving, self-dealing litigants. The court also notes that, at least as interpreted in *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* and *Hearn Pac. Corp. v. Second Generation Roofing, Inc.*, the court used the word "presently" in discussing intent to assign. The court wonders if Harkey formed an intent to assign PCF's rights to CalComm in December of 2011, but waited several months to commit such intent to a written instrument, can Harkey be said to have had an actual present intent in December 2011, or was it still just a nascent notion? The problem is and always has been that the court has very little if any evidence to work with. But the possibility such a present intention *could have been formed* effective to make an assignment leaves us in a very murky situation. In short, the court is not convinced that § 1052 can be interpreted as broadly as Trustee argues it should be. But we are left in a dark pond of pure speculation because the court cannot preclude that possibility either.

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Brewer cites *Neptune Society Corp. v. Longanecker*, 194 Cal. App. 3d 1233, 1242 (1987) for the proposition that with respect to assignments, "the evidence must not only be sufficient to establish the fact of assignment when the fact is in issue, but the measure of sufficiency requires that the evidence of assignment be clear and positive..." It is apparent on this record there exists "clear and positive" evidence of intent to assign, but frustratingly vague is, when? There is the metadata from the Word documents that helps establish that some of these assignments were being drafted as early as December of 2011. There is also the testimony from Martin that Harkey approached him about drafting the assignment agreements around February of 2012. Where does this evidence leave us in terms of "clear and positive" evidence of an assignment?

To sum up, on the one hand, we have testimony from Martin that appears to establish that the assignments were not finalized until after March 2012. On the other, it appears, based on that same testimony, that Martin was not certain about the critical dates. Brewer's arguments regarding Harkey's testimony and actions also necessarily involve an uncomfortable degree of speculation. Then there is Trustee's legal theory that, odd as it may be, has not been rejected by any authority cited by Brewer. There is also some evidence that Harkey approached Martin about drafting these agreements sometime in February of 2012 and that assignment agreements may have been drafted as early as December 2011.

So, what to do? The court is left with the overall impression that the assignment, or more correctly, an effective version of the assignment could plausibly have happened anytime between December 2011 and mid-2012. But has Brewer presented the "preponderance" of the evidence, as it must, that the assignment clearly happened after March 16 to fulfill its burden of proof? The answer is "no", and the court finds the evidence (such as it is) is in equipoise. It is not that each side has not produce something. It is more that each side's evidence is so vague and inconclusive as to barely move the needle, if at all. The definition of "preponderance of the evidence" found in

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Black's Law Dictionary is instructive:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. *This is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has stronger evidence, however slight the edge may be. Black's Law Dictionary 1220 (8th ed. **Preponderance of the evidence** 2004).

As cited above, in the Ninth Circuit, "[i]t is well established that the party who bears the burden of proof loses if the record is inconclusive on the crucial point." *Marinelarena*, 869 F.3d at 789.

The court is left with the overarching impression that neither side's case is made, and the court is just unable to pinpoint the date in such a way that it could find either attachment or no attachment of the lien. But because Brewer has the burden, the result of this analysis is that Brewer loses.

Trustee is instructed to submit an order and findings in accord with the above.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M. Landau

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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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8:19-14430 John Zubko

Chapter 13

#16.00 Amended Motion To Vacate Dismissal Of Case And Reinstate Case And Automatic Stay
(OST Signed 2-04-20 - Advancing this matter from 2-19-20 at 3:00 p.m.)

Docket 34

Tentative Ruling:

Tentative for 2/11/20:

Reinstating after a dismissal of the case on a Rule 60 motion seems appropriate. However, reinstating the stay after a foreclosure is quite another matter. More of a showing would be needed than is given here.

Indeed, it is unclear that the court, by motion, could erase a foreclosure conducted under state law without any stay being in effect, particularly in a summary motion as is attempted here.

Likely, an adversary proceeding on a fraud theory would be required.

Party Information

Debtor(s):

John Zubko

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#17.00 Motion In An Individual Chapter 11 Case For Order Authorizing Use of Cash Colateral [11 U.S.C. Section 363]
(OST Signed 2-07-20)

Docket 18

Tentative Ruling:

Tentative for 2/11/20:
No tentative pending opposition due at hearing.

Party Information

Debtor(s):

Rafik Youssef Kamell

Represented By
Robert P Goe

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Hearing Room 5B

10:00 AM

8:19-14904 Maria Del Carmen Bernal

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2006 Chevrolet Corvette, VIN 1G1YY26U565100651

SCHOOLSFIRST FEDERAL CREDIT UNION
Vs.
DEBTOR

Docket 15

Tentative Ruling:

Tentative for 2/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Maria Del Carmen Bernal

Represented By
Michael E Hickey

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, February 18, 2020

Hearing Room 5B

10:00 AM

8:19-14904 Maria Del Carmen Bernal

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2015 Chevrolet 3500 VIN 19XZE4F90KE028221

SCHOOLSFIRST FEDERAL CREDIT UNION
Vs.
DEBTOR

Docket 16

Tentative Ruling:

Tentative for 2/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Maria Del Carmen Bernal

Represented By
Michael E Hickey

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, February 18, 2020

Hearing Room 5B

10:00 AM

8:19-14904 Maria Del Carmen Bernal

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2015 Chevrolet Suburban 1500, VIN 1GNSCJKC7FR273588

SCHOOLSFIRST FEDERAL CREDIT UNION
Vs.
DEBTOR

Docket 17

Tentative Ruling:

Tentative for 2/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Maria Del Carmen Bernal

Represented By
Michael E Hickey

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, February 18, 2020

Hearing Room 5B

10:00 AM

8:16-12484 Robert Arcadio Acosta

Chapter 13

**#3.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-04-20)**

LA CASA REAL OWNERS ASSOCIATION
Vs.
DEBTOR

Docket 41

Tentative Ruling:

Tentative for 2/18/20:
Status?

Tentative for 2/4/20:
Grant unless current or APO. Lack of statements, even if true, is a lame
excuse on what should be a recurring monthly obligation. Also, the court has
little sympathy for post-petition defaults.

Party Information

Debtor(s):

Robert Arcadio Acosta

Represented By
Brian J Soo-Hoo

Movant(s):

La Casa Real Owners Association

Represented By
Alyssa B Klausner

Trustee(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 18, 2020

Hearing Room 5B

10:00 AM

8:18-12052 Frank Bowers, Jr.

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 74

Tentative Ruling:

Tentative for 2/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Frank Bowers Jr.

Represented By
Peter Rasla

Movant(s):

U.S. BANK NATIONAL

Represented By
Jamie D Hanawalt
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, February 18, 2020

Hearing Room 5B

10:00 AM

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

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK N.A.
Vs.
DEBTOR

Docket 88

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY FILED 2-14-20

Tentative Ruling:

Tentative for 2/18/20:
Deny if Movant confirms Debtor is current.

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):

Wells Fargo Bank N.A., et al

Represented By
Diana Torres-Brito

Trustee(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 18, 2020

Hearing Room 5B

10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 12-17-19)**

SEACOAST COMMERCE BANK
Vs.
DEBTOR

Docket 76

Tentative Ruling:

Tentative for 2/18/20:
Status?

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

Movant(s):

Seacoast Commerce Bank

Represented By
George C Lazar

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

Tuesday, February 18, 2020

Hearing Room

5B

10:00 AM

8:19-14445 Kimberly S Connell

Chapter 7

**#7.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-14-20)**

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Tentative for 2/18/20:
Stipulation re: sale of real property was filed February 3, 2020 and remains pending. Does the stipulation re: sale render the motion moot? Status?

Tentative for 1/14/20:
Grant. Appearance is optional. Award of fees and costs is not a function of this court in this context.

Party Information

Debtor(s):

Kimberly S Connell Pro Se

Movant(s):

U.S. BANK NATIONAL Represented By
Diane Weifenbach

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 18, 2020

Hearing Room 5B

10:00 AM

8:20-10220 Antonio Vega Benavides

Chapter 13

#8.00 Motion In Individual Case For Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Real Property Located at 1419 West Catherine Drive, Anaheim, CA 92801.
(OST Signed 1-31-20)

Docket 13

Tentative Ruling:

Tentative for 2/18/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

Antonio Vega Benavides

Represented By
Sunita N Sood

Movant(s):

Antonio Vega Benavides

Represented By
Sunita N Sood
Sunita N Sood
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, February 18, 2020

Hearing Room 5B

10:00 AM

8:19-14430 John Zubko

Chapter 13

#9.00 Amended Motion To Vacate Dismissal

Docket 34

***** VACATED *** REASON: ADVANCED TO 2-11-20 AT 11:00 A.M.
PER ORDER GRANTING APPLICATION AND SETTING HEARING ON
SHORTENED NOTICE ENTERED 2-4-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Zubko

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, February 18, 2020

Hearing Room 5B

11:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 11

#10.00 Emergency Motion By Chapter 11 Trustee For Order Converting Case To Chapter 7
(OST Signed 2-11-20)

Docket 191

Tentative Ruling:

Tentative for 2/18/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad

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

Tuesday, February 18, 2020

Hearing Room 5B

11:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 11

#11.00 Emergency Motion By Chapter 11 Trustee For Order Authorizing Trustee: (1) To Enter Into Management Agreement With The Grand Theater And Musa Madain Pursuant to 11 U.S.C. Section 363(b), And (2) In the Event Of Conversion To Chapter 7, To Operate The Debtor's Business Pursuant To 11 U.S.C. Section 721, Use Property Of The Estate Pursuant To 11 U.S.C. Sections 363(b)(1) And (c)(1), And Pay Pre-Conversion Wages And Necessary Expenses
(OST Signed 2-11-20)

Docket 192

Tentative Ruling:

Tentative for 2/18/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad

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

Wednesday, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-13020 Patricia Bullock

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

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.

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

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

Wednesday, February 19, 2020

Hearing Room

5B

1:30 PM

8:19-13139 Brian Leach

Chapter 13

#2.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)

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.

Party Information

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-13285 Robert Igor Gaul

Chapter 13

**#3.00 Confirmation of 1st Amended Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-13427 Daniel Patrick Pinto and Jessica D Pinto

Chapter 13

#4.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)

Docket 2

Tentative Ruling:

Tentative for 11/20/19:

The trustee's objections are well-taken and must be addressed before confirmation can occur.

Party Information

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-13886 Gary C. Macrides

Chapter 13

**#5.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-13931 Cesar Larios and Trudy Rosa Larios

Chapter 13

**#6.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14117 Paul Nguyen

Chapter 13

**#7.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul Nguyen

Represented By
Chris T Nguyen

Movant(s):

Paul Nguyen

Represented By
Chris T 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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14411 Wesby Owens, Jr. and Cheyenne Ramona Owens

Chapter 13

**#8.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wesby Owens Jr.

Represented By
Sunita N Sood

Joint Debtor(s):

Cheyenne Ramona Owens

Represented By
Sunita N Sood

Movant(s):

Wesby Owens Jr.

Represented By
Sunita N Sood
Sunita N Sood

Cheyenne Ramona Owens

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14448 Henry C Vorwerk

Chapter 13

**#9.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry C Vorwerk

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14456 Mario Ortiz

Chapter 13

**#10.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mario Ortiz

Represented By
Sunita N Sood

Movant(s):

Mario Ortiz

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14462 William Alfred Butler and Nanette Marie Butler

Chapter 13

**#11.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Alfred Butler

Represented By
Heather J Canning

Joint Debtor(s):

Nanette Marie Butler

Represented By
Heather J Canning

Movant(s):

William Alfred Butler

Represented By
Heather J Canning

Nanette Marie Butler

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14486 Rosalie A Dufrenne

Chapter 13

**#12.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosalie A Dufrenne

Represented By
Kevin Tang

Movant(s):

Rosalie A Dufrenne

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14502 Andy T. Torres

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Movant(s):

Andy T. Torres

Represented By
Richard G Heston
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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

Docket 0

Tentative Ruling:

Tentative for 2/19/20:

Status on missing payments, 341(a) business budget, etc.?

Party Information

Debtor(s):

Ashley Dawn Conrad

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14613 Alan G. Gonzalez

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Docket 2

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 12-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alan G. Gonzalez

Represented By
Raymond J Seo

Movant(s):

Alan G. Gonzalez

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14633 Garo Giragos Babikian

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 12-16-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garo Giragos Babikian

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14634 Trinna Mong Trinh Nguyen

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

Docket 5

Tentative Ruling:

Tentative for 2/19/20:

Status of delinquencies, mortgage and tax statements, etc.?

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen	Pro Se
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Movant(s):

Trinna Mong Trinh Nguyen	Pro Se
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Trustee(s):

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

Wednesday, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14637 Shane Alan Magness

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shane Alan Magness

Represented By
Hasmik Jasmine Papian

Movant(s):

Shane Alan Magness

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14686 Paulina Fausto

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 12-23-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulina Fausto

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 1675 Calendar**

Wednesday, February 19, 2020

Hearing Room 1675

1:30 PM

8:19-14686 Paulina Fausto

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: THIS MATTER IS A DUPLICATE OF
MATTER #19 -SEE MATTER #19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulina Fausto

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14724 Jeffrey Lowry

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Lowry

Represented By
Michael D Franco

Movant(s):

Jeffrey Lowry

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14744 Adam Dennis Fay

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adam Dennis Fay

Represented By
Christopher J Langley

Movant(s):

Adam Dennis Fay

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14756 Carolann McGough

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Docket 14

Tentative Ruling:

Tentative for 2/19/20:

Status of business questionnaire and procuring plan treatment on JP Morgan Chase?

Party Information

Debtor(s):

Carolann McGough

Represented By
William G Cort

Movant(s):

Carolann McGough

Represented By
William G Cort

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14767 Lamberto Sais-Lopez

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lamberto Sais-Lopez

Represented By
David R Chase

Movant(s):

Lamberto Sais-Lopez

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14782 Petra Camarillo

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Petra Camarillo

Represented By
Kaveh Ardalan

Movant(s):

Petra Camarillo

Represented By
Kaveh Ardalan

Trustee(s):

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 19, 2020

Hearing Room 5B

1:30 PM

8:19-14802 Christi McGowan and Matthew McGowan

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christi McGowan

Represented By
Gary Polston

Joint Debtor(s):

Matthew McGowan

Represented By
Gary Polston

Movant(s):

Christi McGowan

Represented By
Gary Polston
Gary Polston
Gary Polston

Matthew McGowan

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, February 19, 2020

Hearing Room 5B

1:30 PM

8:19-14805 Patricia Suzanne Moon

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 12-30-19**

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 19, 2020

Hearing Room

5B

3:00 PM

8:15-11274 Michael Kevin Fountain and Wendy L. Christensen

Chapter 13

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

Docket 77

Tentative Ruling:

Tentative for 2/19/20:

Grant unless both current on existing plan payments and motion to modify is on file sufficient to account for how the \$34,300 needed will be met.

Party Information

Debtor(s):

Michael Kevin Fountain

Represented By
Richard G Heston

Joint Debtor(s):

Wendy L. Christensen Fountain

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 5B

3:00 PM

8:15-11287 Edward Lee

Chapter 13

#29.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c)) Failure to Complete the Plan Within its Terms

Docket 52

Tentative Ruling:

Tentative for 2/19/20:
Grant unless current or other remedy sought.

Party Information

Debtor(s):

Edward Lee

Represented By
Thomas B Ure

Trustee(s):

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 19, 2020

Hearing Room 5B

3:00 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#30.00 Chapter 13 Trustee's Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))
(cont'd from 1-15-20)

Docket 122

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
TRUSTEE'S MOTION FOR ORDER DISMISSING CHAPTER 13 (11
U.S.C. - 1307(C)) FILED 1/27/2020**

Tentative Ruling:

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 5B

3:00 PM

8:17-12922 Jaime Guerrero

Chapter 13

#31.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 1-15-20)

Docket 51

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 2-05-20

Tentative Ruling:

Tentative for 1/15/20:
Same.

Tentative for 12/18/19:
Grant unless current.

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-11129 Elvin Lorenzana and Somer Asako Shimada

Chapter 13

#32.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments
(cont'd from 1-15-20)

Docket 54

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 2-12-20**

Tentative Ruling:

Tentative for 1/15/20:

A motion to modify has been filed. Continue to allow for processing.

Party Information

Debtor(s):

Elvin Lorenzana

Represented By
Anerio V Altman

Joint Debtor(s):

Somer Asako Shimada

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-11713 Marlene C. Lewis

Chapter 13

**#33.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 1-15-20)**

Docket 100

Tentative Ruling:

Tentative for 2/19/20:
Same.

Tentative for 1/15/20:
Same.

Tentative for 12/18/19:
Grant unless current.

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-13362 Shelley M Spear

Chapter 13

#34.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c)) for Failure to Make Plan Payments.

Docket 58

Tentative Ruling:

Tentative for 2/19/20:
Grant unless current.

Party Information

Debtor(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 19, 2020

Hearing Room 5B

3:00 PM

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

Chapter 13

#35.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 33

Tentative Ruling:

Tentative for 2/19/20:
Grant unless current or motion to modify on file.

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-13480 Manuel Florence

Chapter 13

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

Docket 106

Tentative Ruling:

Tentative for 2/19/20:

Continue to allow for processing of motion to modify filed 2/6/20.

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-13480 Manuel Florence

Chapter 13

#37.00 Debtor's Objection To Claim #6 By Claimant Dennis Middon.

Docket 108

Tentative Ruling:

Tentative for 2/19/20:
Sustain as to both 6 & 8.

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-13480 Manuel Florence

Chapter 13

#38.00 Debtor's Objection To Claim # 8 By fClaimant Dennis Middon.

Docket 109

Tentative Ruling:

Tentative for 2/19/20:
See #37

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-13646 Denyse Marie Kielb

Chapter 13

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

Docket 59

Tentative Ruling:

Tentative for 2/19/20:
Grant unless current.

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:18-13722 Michael Simon

Chapter 13

**#40.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 1-15-20)**

Docket 46

Tentative Ruling:

Tentative for 2/19/20:
Grant unless current.

Tentative for 1/15/20:
Same.

Tentative for 12/18/19:
Same.

Tentative for 11/20/19:
Grant unless current.

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-10568 Shanae Embry and Terrance Embry

Chapter 13

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

Docket 67

Tentative Ruling:

Tentative for 2/19/20:
Grant unless current.

Party Information

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

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

Docket 37

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 12-30-19**

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#43.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c)) (failure to make plan payments)
(cont'd from 1-15-20)

Docket 32

Tentative Ruling:

Tentative for 2/19/20:
Same.

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Annelize Ladage

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-12603 David Bergman and Anne Bergman

Chapter 13

**#44.00 Trustee's Motion to Dismiss Case Due to Material Default Of A Plan Provision
(cont'd from 1-15-20)**

Docket 37

Tentative Ruling:

Tentative for 2/19/20:
Order granting motion to modify was entered 2/10/20. Does this moot dismissal?

Tentative for 1/15/20:
Motion to modify was filed 1/2. Continue to allow for processing.

Party Information

Debtor(s):

David Bergman

Represented By
Gary Polston

Joint Debtor(s):

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

#45.00 Verified Trustee's Motion For Dismissing Chapter 13 Proceeding

Docket 51

Tentative Ruling:

Tentative for 2/19/20:

Grant unless funds necessary to make payments are turned over to trustee within 10 days. See #46 - motion to modify.

Party Information

Debtor(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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

#46.00 Verified Motion For Order Modify The Chapter 13 Plan

Docket 50

Tentative Ruling:

Tentative for 2/19/20:
Grant.

Party Information

Debtor(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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-13020 Patricia Bullock

Chapter 13

#46.10 Motion for Authority to Incur Debt - [Personal Property]

Docket 87

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF DEBTOR'S MOTION FOR AUTHORITY
TO INCUR DEBT [PERSONAL PROPERTY] FILED 2-11-20**

Tentative Ruling:

- NONE LISTED -

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
Courtroom 5B Calendar**

Wednesday, February 19, 2020

Hearing Room 5B

3:00 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

#47.00 Amended Motion Under LBR 3015-1(n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 55

Tentative Ruling:

Tentative for 2/19/20:
Debtors need to respond to Trustee's comments.

Party Information

Debtor(s):

Martin Garcia

Represented By
Arlene M Tokarz

Joint Debtor(s):

Desiree Marie Garcia

Represented By
Arlene M Tokarz

Movant(s):

Martin Garcia

Represented By
Arlene M Tokarz

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-14430 John Zubko

Chapter 13

#48.00 Amended Motion To Vacate Dismissal Of Case And Reinstate Case And Automatic Stay

Docket 34

***** VACATED *** REASON: ADVANCED TO 2-11-20 AT 11:00 A.M.
PER AMENDED ORDER: GRANTING APPLICATION AND SETTING
HEARING ON SHORTENED NOTICE ENTERED 2-04-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Zubko

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 5B

3:00 PM

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

Chapter 13

**#49.00 Debtor's Objection To Claim 5-2 Submitted By Alamitos Real Estate Partners II, LP
(cont'd from 11-20-19)**

Docket 71

Tentative Ruling:

Tentative for 2/19/20:
Wait for stipulation?

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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#50.00 Confirmation of Chapter 13 Plan
(cont'd from 1-15-20)**

Docket 48

Tentative Ruling:

Tentative for 2/19/20:
See #51

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Charles Ragan Peyton III

Represented By
Richard G Heston
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, February 19, 2020

Hearing Room 5B

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

#51.00 Objection to Claim of Homestead Exemption

Docket 69

Tentative Ruling:

Tentative for 2/19/20:

This is the Trustee's objection to the debtor's enhanced claim of homestead under CCP §704.730(a)(3)(B) against the property commonly known as 80 Gingerwood, Irvine, CA.

The Debtor filed a voluntary chapter 7 petition on January 17, 2019. On the filing date, Debtor indicated on his Schedule I that he was employed but temporarily disabled and that he was receiving State Disability Income (SDI) in the amount of \$1,026.29 per month. He indicated that he did not expect an increase or a decrease in income within the year after filing. On this original filing, Debtor claimed a homestead exemption of \$100,000.

According to Debtor's testimony, he returned to work in mid-May. In the beginning of October, he amended his Schedules I and J and disclosed that he was no longer receiving disability, that he was employed as a chain store merchandizer, and that he had a monthly net income of \$835.21. On the same day he amended his Schedules, Debtor filed a motion to convert the case to chapter 13, which went uncontested. There is an underlying implication that the conversion was self-serving inasmuch as the Chapter 7 trustee reportedly showed some signs of interest in selling the Gingerwood property. But we have no real evidence of improper motive such as in *Marrama v. Citizens Bank*, 549 U.S. 365 (2007).

In early December, Debtor amended his Schedules I and J again. On his amended Schedule I, Debtor indicated that he was still employed but added that he was again temporarily disabled and recorded income only from state disability. On his amended Schedule J, he disclosed that he had a

**United States Bankruptcy Court
Central District of California
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Wednesday, February 19, 2020

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3:00 PM

CONT... **Charles Ragan Peyton, III**

Chapter 13

negative net monthly income of \$292.80. A few weeks after amending his Schedules I and J, Peyton amended his Schedules A, B, and C. He indicated that the value of his property increased, and he changed his homestead exemption to \$175,000. Debtor claimed this increased exemption under CCP § 704.730(a)(3)(B), which requires that a Debtor must be mentally or physically disabled and unable to engage in substantial gainful employment. The Trustee has filed a timely objection.

1. The Debtor Was Permitted to Amend His Schedules

First, we must determine if the Debtor was even able to amend his Schedules. A debtor may amend his petition, list, schedule or statement at any time before the case is closed. FRBP. 1009(a). This is liberally construed, and a debtor does not need court approval before amending his schedules. *In re Michael*, 163 F.3d 526, 529 (9th Cir. 1998). There does not seem to be any dispute whether Debtor was entitled to amend his Schedules, the conflict is whether he can claim this enhanced homestead exemption.

2. The Debtor Has the Burden of Proving He is Entitled to the Exemption

There is confusion in the papers over who has the burden of proof when a debtor claims an exemption. Debtor argues that the Trustee bears the burden of proving the homestead exemption was not properly claimed. This argument is consistent with FRBP 4003(c). The rule in the Ninth Circuit had been that a debtor's claimed exemption is presumptively valid and the party objecting to a debtor's exemption has the burden of proving that the claimed exemption is improper. *In re Carter*, 182 F.3d 1027 (9th Cir. 1999).

However, new authority has shifted this burden. The Supreme Court has held, after the ruling in *Carter*, that state law governs substance claims and burden of proof is substantive given its importance to the outcome of

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3:00 PM

CONT...

Charles Ragan Peyton, III

Chapter 13

cases. *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000). The Ninth Circuit, interpreting the ruling of *Raleigh*, found that the burden of proving state law exemptions should be governed by the appropriate state law. *In re Diaz*, 547 B.R. 329 (9th Cir. BAP 2016). The court in *Diaz* acknowledged the holding in *Carter*, that the burden of proof for claiming exemptions was dictated by federal rule 4003(c), but *Raleigh* was decided after *Carter*. The authority now appears to be that when a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation. *Id.* See also *In re Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); *In re Barnes*, 275 B.R. 889, 898 n.2 (Bankr. E.D. Cal. 2002).

This court adopts the burden of proof outlined in *Diaz* and in accordance with California state law, which dictates the burden of proof is on the party claiming the exemption. Cal Code Civ Proc §703.580. Therefore, Debtor has the burden of proving that the homestead exemption he claimed under CCP §704.730(a)(3)(B) is valid. But is that burden carried?

3. The Preponderance of Evidence Suggests Debtor is Entitled to the Homestead Exemption.

To claim the exemption under CCP §704.730(a)(3)(B) a debtor must be: (1) physically or mentally disabled and (2) unable to engage in substantial gainful employment. A debtor's entitlement to this exemption is determined based on the facts that existed at the time the bankruptcy was filed. Debtor has provided enough evidence to establish that he does have a mental illness. First, at the time he filed his petition he was on temporary disability and was receiving temporary state disability income. Being on disability suggests that he indeed had some mental or physical illness.

Second, Debtor provided testimony from Dr. Boerlin who claims that Debtor suffered and continues to suffer from a psychiatric illness. Debtor has been a patient of Dr. Boerlin for several years and Dr. Boerlin's certification as

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3:00 PM

CONT... **Charles Ragan Peyton, III**

Chapter 13

a Diplomate in psychiatry by the American Board of Psychiatry and Neurology seems to qualify him to make this determination. Further, Debtor testified that in January 2019 he was discharged from Northbound, an addiction rehabilitation center, due to the severity of his mental health problems. The Trustee has not provided any evidence indicating that Debtor was not deserving of the state disability income or evidence that Dr. Boerlin's testimony is not credible. Therefore, Debtor has met his burden of proof that he did have a mental disability on the petition date.

The more difficult question is whether Debtor has met his burden of proving the second element, that when the bankruptcy was filed, he was unable to engage in substantial gainful employment. Gainful employment is substantial if it involves significant physical or mental activity and is gainful if it is done for pay or profit, whether or not a profit is realized. *In re Rostler*, 169 B.R. 408 (Bankr. C.D. Cal. 1994). The debtor must be physically, mentally, and emotionally able to work enough hours, at a high enough net wage, to contribute materially to his support. *In re Neff*, No. BAP CC-12-1664-KITAD, 2014 WL 448885 (B.A.P. 9th Cir. 2014).

The Trustee argues that by filing an amended Schedule I asserting employment income in conjunction with the motion to convert, the Debtor is judicially estopped from arguing that he was unable to engage in substantial gainful employment (as of the petition date). These actions are suspicious, and it is possible that he is trying to take advantage of the court by claiming an ability to work at one point and an inability to work at another, whenever it is convenient for him. However, it is also possible that Debtor suffered from a mental illness at the time he filed his petition, attempted to return to work, but was ultimately unable to do so successfully because of his mental illness. The court's concern is to determine Debtor's condition at the time of filing. Returning to work and converting the case to chapter 13, several months after the petition date, is not determinative that Debtor was trying to take advantage of the court or that he was able to engage in substantial gainful employment at the time of filing. Subsequent recovery from a mental illness

**United States Bankruptcy Court
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3:00 PM

CONT... **Charles Ragan Peyton, III**

Chapter 13

does not indicate that someone never suffered from a mental illness that prevented them from engaging in substantial gainful employment, particularly as here where relapse seems to have occurred.

It should be said that Debtor's arguments are not totally convincing. Debtor argues that because he was on disability at the time that he filed for bankruptcy he was unable to engage in substantial gainful employment. Being on disability may indicate that Debtor was not able to work at Southern Glazers Wine & Spirits however, it does not necessarily indicate that he was not able to engage in *any* type of substantial gainful employment. Receiving disability from one job is not determinative that he cannot have substantial gainful employment elsewhere.

But Debtor also presents Dr. Boerlin's testimony where he claims that Debtor was unable to engage in substantial gainful employment at the date of filing, which is convincing and is largely not rebutted. The timeline of Debtor's and Dr. Boerlin's relationship is concerning. The court is concerned over what Debtor's condition was on the petition date, and although he has been Dr. Boerlin's patient for several years, we are unsure of when Dr. Boerlin last saw Debtor to diagnose him. Dr. Boerlin testifies that since January 2019, Debtor has been suffering from a disability that prevents him from engaging in substantial gainful employment, but when did Dr. Boerlin make this determination? Debtor became Dr. Boerlin's patient most recently starting on February 20, 2019, which is a month after the petition. Considering Debtor was able to return to substantial gainful employment, albeit shorty, only five months after the petition was filed, it would have been helpful to know when Dr. Boerlin last saw Debtor to form his diagnosis.

Further, according to Debtor's testimony, he was a patient at Northbound rehabilitation center in January 2019, where he was supposedly discharged due to his mental illness. Why did Debtor not include any testimony from employees at the rehabilitation center to corroborate his claim?

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CONT...

Charles Ragan Peyton, III

Chapter 13

Neither party's arguments give a clear indication of Debtor's condition on the date of filing, but the facts preponderate in the Debtor's favor. While being on disability does not prove definitively that Debtor was unable to engage in any substantial gainful employment, it does suggest mental illness prevented him from doing so. Further, while we do not have the exact timeline, Debtor was under Dr. Boerlin's psychiatric care intermittently for several years and met with him only a month after the filing. The court will defer to Dr. Boerlin's medical expertise as he indicates that Debtor was unable to engage in substantial gainful employment at the filing date because of his mental illness. The Trustee's only real argument is that Debtor is trying to take advantage of the court by claiming at one point he could work so he could get his case converted to chapter 13, but is now claiming that he was unable to work so he can claim this homestead exemption. While this inconsistency is noteworthy, it not enough to overcome Debtor's evidence. It is not inconceivable that he was unable to engage in substantial gainful employment on the date of the petition, attempted to go back to work and converted his case to chapter 13, but ultimately had to go back on disability as his relapsed illness overtook him. Evidence of being on disability at the time of filing and the testimony from the seemingly qualified Dr. Boerlin persuades the court, on balance, that at the date of filing Debtor was unable to engage in substantial gainful employment, thus fulfilling the second element of the exemption.

Overrule

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-12290 Jorge Alberto Barreda

Chapter 13

#52.00 Objection to Claim Of LVNV Funding -Claim # 2

Docket 47

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL AND WITHDRAWAL OF OBJECTION TO CLAIM NO. 2
FILED BY LVNV FUNDING, LLC FILED 2-17-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Alberto Barreda

Represented By
Amanda G Billyard

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-13139 Brian Leach

Chapter 13

**#53.00 Motion For Orders Determining Value Of Secured Claim
(cont'd from 1-15-20)**

Docket 44

Tentative Ruling:

Tentative for 2/19/20:
Grant? Value at \$4,650.

Tentative for 1/15/20:
Grant.

Party Information

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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3:00 PM

8:19-13186 Angela Huichuan Yu

Chapter 13

#54.00 Motion To Disallow Claim #13-2 Of Deutsch Bank National Trust Company, As Trustee Fro Morgan Stanley ABS Capital 1 Inc. Truste 2007-HE2 Mortgage Pass Through Certificates Series 2007-HE2

Docket 59

***** VACATED *** REASON: OFF CALENDAR - AMENDED
VOLUNTARY DISMISSAL OF MOTION TO DISALLOW CLAIM #13-2
OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE
FOR MORGAN STANLEY ABS CAPITAL INC. TRUST FILED 1-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angela Huichuan Yu

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-13427 Daniel Patrick Pinto and Jessica D Pinto

Chapter 13

#55.00 Motion For Order Determining Value Of Collateral Re: 2010 BMW X6

Docket 32

Tentative Ruling:

Tentative for 2/19/20:

Grant provided counsel can verify hanging paragraph of section 1325(a) does not apply.

Party Information

Debtor(s):

Daniel Patrick Pinto

Represented By
Onyinye N Anyama

Joint Debtor(s):

Jessica D Pinto

Represented By
Onyinye N Anyama

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-13419 Diane Weinsheimer

Chapter 13

**#56.00 Confirmation of Chapter 13 Plan
(con't from 1-15-20)**

Docket 2

Tentative Ruling:

Tentative for 2/19/20:
Status?

Tentative for 1/15/20:
Status? See #56.

Tentative for 11/20/19:
Is resolution of #58 a precondition to confirmation?

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.

Tentative for 8/21/19:
Evidentiary hearing on claim objection is being continued by stipulation?

Tentative for 5/29/19:

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CONT... Diane Weinsheimer
Same.

Chapter 13

Tentative for 4/17/19:
Is a resolution of claim objection (see #43) necessary before confirmation?

Party Information

Debtor(s):

Diane Weinsheimer

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-13419 Diane Weinsheimer

Chapter 13

#57.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing
(con't from 1-15-20 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 1-13-20)

Docket 26

***** VACATED *** REASON: CONTINUED TO 4-15-20 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 2-18-20**

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

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CONT... Diane Weinsheimer

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Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:19-12516 Ultimate Brands Inc

Chapter 7

Adv#: 8:19-01227 Salon Rebelle LLC et al v. Ultimate Brands Inc et al

#1.00 STATUS CONFERENCE RE: Complaint for Determination of Non-Dischargeability of Debt Under 11 U.S.C. Section 523(a)(2)(A) and (a)(6), and Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(4)(C)and (c); Demand for Jury Trial

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
Status of answer or default?

Party Information

Debtor(s):

Ultimate Brands Inc

Represented By
Julie J Villalobos

Defendant(s):

Ultimate Brands Inc

Pro Se

Ultimate Franchises Inc

Pro Se

William Scott Griffiths

Pro Se

Loretta Hwong Griffiths

Pro Se

Ron Love

Pro Se

Dianne Davis

Pro Se

Salon Rebelle Inc

Pro Se

Plaintiff(s):

Salon Rebelle LLC

Represented By
Jeffrey M Blank
Norma V Garcia

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CONT... Ultimate Brands Inc

Chapter 7

Marcos Trujillo

Represented By
Jeffrey M Blank
Norma V Garcia

Elizabeth Aguiar-Gutierrez

Represented By
Jeffrey M Blank
Norma V Garcia

Vicky Garza

Represented By
Jeffrey M Blank
Norma V Garcia

Darryl Vergolino-Holiday

Represented By
Jeffrey M Blank
Norma V Garcia

SALON REBELLE, INC.

Represented By
Jeffrey M Blank
Norma V Garcia

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang

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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

**#2.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of
Unauthorized Post-Petition Transfer
(con't from 12-05-19 per order approving stip. between plaintiff &
defendants to cont. s/c entered 12-04-19)**

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Deadline for completing discovery: May 1, 2020
Last date for filing pre-trial motions: May 25, 2020
Pre-trial conference on:
Joint pre-trial order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by Plaintiff within
10 days. One day of mediation to be completed by May 1, 2020.

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?

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CONT... Long-Dei Liu

Chapter 11

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):

WELLS FARGO BANK,

Pro Se

Shu Shen Liu

Pro Se

Plaintiff(s):

Wesley H. Avery

Represented By
Laila Masud
D Edward Hays

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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

**#3.00 Defendant Shu-Shen Liu's Motion For Summary Judgment
(cont'd from 12-5-19 per order granting plaintiff's mtn for continuance of
defendant's mtn for summary judgment entered 11-19-19)**

Docket 26

Tentative Ruling:

Tentative 2/20/20:

Avery v. Wells Fargo Bank, National Association, and Shu-Shen Liu (In re Long-Dei Liu, dba Long-Dei Liu, M.D.); Avery v. Shu-Shen Liu (In re Long-Dei Liu, dba Long-Dei Liu, M.D.); Avery v. JP Morgan Chase Bank and Shu-Shen Liu (In re Long-Dei Liu, dba Long-Dei Liu, M.D.); Avery v. Barclays Bank Delaware and Shu-Shen Liu (In re Long-Dei Liu, dba Long-Dei Liu, M.D.); Avery v. Citibank and Shu-Shen Liu (In re Long-Dei Liu, dba Long-Dei Liu, M.D.); Avery v. Bank of America Corporation, Charles C.H. Wu & Associates, APC, and Shu-Shen Liu (In re Long-Dei Liu, dba Long-Dei Liu, M.D.); Avery v. Charles W.H. Wu & Associates, APC, and Shu-Shen Liu (In re Long-Dei Liu, dba Long-Dei Liu, M.D.) # 3, 5, 7, 9, 11, 13, and 15 @ 10:00 a.m. February 20, 2020

I. Introduction

At the outset the court notes that these adversary proceedings are largely matters of accounting rather than avoidance. This being the case, trustee's theories of avoidance, except where noted, find little purchase. As will be further elaborated below, the trial that took place in the original adversary proceeding sought to adjudicate the character of the funds in certain disputed accounts. To that end, the court took pains to trace the funds in those accounts as best it could and then issued its rulings on each account. Thus, the parties should be clear as to what was deemed

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CONT... Long-Dei Liu

Chapter 11

community property and what was held to be Defendant's separate property. The funds that were ultimately held to be community property must be turned over to the trustee. In some cases, amounts in certain accounts determined to have been estate property were diminished by post-petition payments. But this is not particularly meaningful if it is the original amounts (not the reduced amounts) determined to be community and thus estate property, which were to be turned over. Indeed, the court's July 30, 2018 Memorandum of Decision Following Trial ("Memorandum of Decision" or "MOD") followed by Judgment entered October 4, 2018, which at its page 3, lines 7-9 contains a turnover order pursuant to §542(a). Therefore, the court sees little reason now to take a deep dive into the various post-petition transfers that are the subjects of these adversary proceedings *to the extent those transfers are subsumed within what has already been determined* to be subject to turnover. Because the court has already issued rulings on the sources of the funds involved, in the court's view, an avoidance action over the same amounts under §549 would be relitigating to an unnecessary end at unnecessary expense.

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. 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.

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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).

III. *Res Judicata* Standards

To raise a successful *res judicata* defense, three elements must be satisfied: "(1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003). To evaluate these elements' application here, it might be useful to review the background facts common to all the adversary proceedings

On October 20, 2016, creditors of Dr. Liu's bankruptcy estate, William Hong and Harry Hong, by and through their guardian *ad litem* Yuanda Hong (collectively, the "Hong Creditors") filed an adversary complaint, 8:16-ap-01233 ("original adversary proceeding") against Dr. and Mrs. Liu, and later amended on December 12, 2016, alleging two causes of action for: (1) avoidance of fraudulent transfer pursuant to California Civil Code § 3439, et seq.; and (2) declaratory relief as to Mrs. Liu's claimed separate property assets. The Hong Creditors sought declaratory relief that as between Dr. Liu

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and Mrs. Liu, Mrs. Liu owned no separate property and that all such claimed separate assets were community property derived from marital income that should be administered as part of the bankruptcy estate. The fraudulent conveyance theory was abandoned as unnecessary, but the declaratory relief action went to trial.

On July 30, 2018, the court entered a Memorandum of Decision Following Trial ("Memorandum of Decision" or "MOD") in the original adversary proceeding, the contents of which are incorporated herein by reference, setting forth the court's findings of fact and conclusions of law with respect to all 24 disputed accounts/assets at issue. In particular, the court reviewed and analyzed all withdrawals, deposits, transfers, and payments issuing to and from the disputed accounts from their inception up until issuance of the MOD. On October 4, 2018, the court entered its Judgment pursuant to the Memorandum of Decision ("Judgment"). On February 14, 2019, after confirmation of the Hong Creditors' Plan, Plaintiff as litigation trustee initiated seven adversary proceedings with the intent of avoiding 28 allegedly unauthorized post-petition transactions totaling \$607,108.43 under 11 U.S.C. §§ 549, 550, and 551. These transactions involved monies reportedly withdrawn by Defendant from financial accounts that were the subject of the trial in the summer of 2018. But in many cases, it turns out that those withdrawals were already acknowledged and factored into the Judgment.

1. Identity of the Claims

"The Ninth Circuit considers four factors in determining an 'identity of claim' for purposes of claim preclusion: '(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.' *Turtle Island Restoration Network v. U.S. Dep't of State*, 673 F.3d 914, 917-18 (9th Cir. 2012) (quoting *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201-02 (9th Cir. 1982). 'The last of these criteria is the most important.' *Id.*" *Everett v. Whitney (In re Pac. Thomas Corp.)*, 2015 Bankr. LEXIS 500, *1, *4 (Bankr. N.D. Cal. Feb. 17, 2015).

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"The Ninth Circuit's analysis of whether two suits arise out of the same transactional nucleus of facts employs the 'transactional' approach, which is described in § 24 in the Restatement (Second) of Judgments. See *W. Sys., Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir. 1992), as amended (June 23, 1992) (citing the Restatement in its application of the transactional approach). Section 24 states:

(1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar ... the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

(2) What factual grouping constitutes a 'transaction,' and what groupings constitute a 'series' are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* at *4-5

A later claim arises from a different transactional nucleus of facts where the later claim alleges new injuries caused by new acts of the defendant. *Id.* at *5 (internal quotations omitted) "The fact that *res judicata* depends on an 'identity of claims' does not mean that an imaginative attorney may avoid preclusion by attaching a different legal label to an issue that has, or could have, been litigated." *Tahoe-Sierra*, 322 F.3d at 1077-78.

For brevity, the court will present each adversary proceeding and the post-petition transactions implicated therein, then direct the reader to the specific page and line numbers in the MOD where the source of the funds is traced, reconciled and ruled upon. In most cases the same acronyms and "SPA" designations will be repeated to avoid confusion.

i. Adv. No. 19-01022 (*Avery v. Wells Fargo Bank, National Association, and Shu-Shen Liu*)

(A) The first transaction is an electronic payment initiated from

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Chase savings account #1036 (Chase #1036 aka SPA 18) on April 13, 2017 in which \$1,000 was paid on the balance of Mrs. Liu's Wells Fargo Visa credit card #2938 (Wells Fargo #2938), which had accrued from the payment of legal fees. This account may need further proceedings to determine its character. Thus, summary adjudication does not appear appropriate (See MOD p.19, Ins. 13-18; p. 20, Ins. 14-27; p.29 Ins 25-28 and p.30, Ins. 1-18) See discussion below in 19-01023 Paragraph (D).

(B) The second transaction was an electronic payment initiated from Chase checking account #8289 (Chase #8289) on November 15, 2017 in which \$4,808.44 was paid on the balance of Wells Fargo #2938, which had accrued from the payment of legal fees. This transaction was traced back to funds transferred out of SPA 16, and later deemed to be Defendant's separate property. Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary adjudication on this transaction is likely appropriate, assuming the other elements of *res judicata* can be met. (See MOD p. 20, Ins. 14-27; p. 29, Ins 25-28 and p. 30, Ins. 1-18)

ii. Adv. No. 19-01023 (*Avery v. Shu-Shen Liu*)

In this adversary proceeding, Plaintiff targets the following seven post-petition transfers:

(A) The first transaction is likely a typographical error. Plaintiff alleges a transaction of \$50,000 with the check no. 009419085 on October 10, 2016. Defendant argues that this is a typo because the second transaction, on October 20, 2016 includes an identical check number and amount. Neither party included information regarding the accounts involved with the October 10, 2016 transaction.

(B) The second transaction is a withdrawal of \$50,000 from the Pacific Life Insurance Company account #8556 (Pacific Life #8556 aka SPA 16) on October 20, 2016. Of the \$50,000 withdrawn from SPA 16, \$49,900 was used to open a Chase #8289 (SPA 17) the remaining \$100 was deposited into a Chase #1036 (SPA 18). This transaction was deemed Defendant's separate property. (See MOD p. 20, Ins.3-27, p. 27, Ins. 21-28, p. 28, Ins. 1-4). Thus, it is appropriate to conclude that this transaction arises

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from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary adjudication on this transaction is likely appropriate, assuming the other elements of *res judicata* can be met.

(C) The third transaction is withdrawal of \$30,000 from Pacific Life # 8856 (SPA 16) on November 9, 2016. This transaction was deemed Defendant's separate property. (See MOD p. 20, Ins. 3-27, p.27, Ins. 21-28, p. 28, Ins. 1-4). Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary adjudication is likely appropriate, assuming the other elements of *res judicata* can be met.

(D) The fourth transaction is a withdrawal of \$30,000 from American General Life Insurance Company #1989 (AGLIC #1989, aka SPA 11). Defendant argues that the Court made direct reference to this transaction in the MOD. (See MOD p. 19, Ins.13-18). But it is unclear whether the Court declared this a separate property asset. The direct reference follows a lengthy discussion regarding the formula for determining the community property assets and separate property assets in SPA 14. The court's intent was not to declare the \$30,000 withdrawal from SPA 11 as a separate property asset but to explain why this transaction did not impact the formula for SPA 14. It is uncertain whether this court determined that this transaction was separate property or community property. Thus, the court cannot conclude that this transaction springs from the same transactional nucleus of operative facts as in the original adversary proceeding, which makes summary adjudication inappropriate.

Should the January 23, 2017 \$30,000 withdrawal from SPA 11 have been included in the formula discussed in SPA 14? Were there any other transfers that should have been included in the formula that were not (e.g. the June 7, 2018 transfer of \$30,000)?

(E) The fifth transaction is a withdrawal of \$91,701.75 from Pacific Life #8856 (SPA 16) on November 3, 2017. This transaction was deemed Defendant's separate property. (See MOD p. 20, Ins. 3-27, p. 27, Ins.21-28, p. 28, Ins. 1-4). Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary adjudication is likely appropriate, assuming

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the other elements of *res judicata* can be met.

(F) The sixth transaction is a withdrawal of \$44,903.67 from Nationwide Life Insurance Company account #6730 (Nationwide #6730 aka SPA 14) on November 20, 2017. This transaction was deemed Defendant's separate property. (See MOD p. 18, Ins.7-26, p. 19, Ins. 1-5). Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary adjudication is likely appropriate, assuming the other elements of *res judicata* can be met.

(G) The seventh transaction is a withdrawal of \$30,000 from AGLIC #1989 on June 7, 2018. Defendant argues that the court made an indirect reference to this transaction in the MOD. (See MOD p. 19, Ins. 13-18). But the court does not directly address the June 7, 2018 transaction. The court did not determine whether this transaction was separate property or community property. For similar reasons as (D), the court cannot conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. See the Court's questions regarding the characterization of this withdrawal following Paragraph (D) above.

iii. Adv. No. 19-01024 (*Avery v. JP Morgan Chase Bank and Shu-Shen Liu*)

In this adversary proceeding, Plaintiff targets the following three post-petition transfers:

(A) The first transaction occurred on November 8, 2016 and involved a transfer of \$3,889.92 from Chase account #1036 (SPA 18) to pay off a balance on Chase Visa card #9100.

(B) The second transaction occurred on December 21, 2016 and involved a transfer of \$1,000 from SPA 18 to pay off a balance on a Chase Visa card #6564.

(C) The third transaction occurred on November 17, 2017 and involved a transfer of \$17,730 also from SPA 18 to pay off a balance on a Chase Visa card #6564. All the funds involved in these transactions

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originated from SPA 16 and were disbursed to other accounts in four major transfers, which totaled \$221,701.75, and were deemed to be Defendant's separate property. Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary judgment appears appropriate on this adversary proceeding, assuming the other elements of *res judicata* can be met. (See MOD pp. 26-28; 29, Ins. 25 -28 -30, Ins. 1-18)

iv. Adv. No. 19-01025 (*Avery v. Barclays Bank Delaware and Shu-Shen Liu*)

In this adversary, Plaintiff targets the following two transactions:

(A) The first transaction occurred on March 13, 2017 and involved the transfer of \$2,398.73 from SPA 18 to pay off the balance on a Barclay Visa card (#7743). This transaction appears to be from the same source as in the first transaction in adv. 19-01022, which the court has not been able to verify as having been definitively adjudicated in the trial. (See adv.#19-01023, Paragraph (D)).

(B) The second transaction occurred on November 10, 2017 in the amount of \$16,731.66 also from SPA 18 to pay off a Barclay Visa card (#7743?). This one is difficult to follow. Defendant argues that the \$16,731.66 transaction was funded from \$1,297.99, left over from the SPA 11 \$30,000 deposit, plus \$15,433.67 from the October 13, 2017 SPA 18 \$50,000 deposit. The first portion of this transaction is what gives the court pause for the same reason as the transaction above. Thus, the court cannot conclude that these transactions arise from the same transactional nucleus of operative facts as in the original adversary proceeding, which makes summary judgement inappropriate in this adversary proceeding.

v. Adv. No.19-01026 (*Avery v. Citibank and Shu-Shen Liu*)

The transaction in question in this adversary proceeding is a transfer on November 15, 2016 of \$8,800 withdrawn from Chase account #8289 (SPA 17) and used to pay off a balance owing on a Citibank Bank Visa card (#1863). The source of this transaction appears to have been adjudicated as

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Defendant's separate property. (See adv. 19-01024) Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary judgement in this adversary proceeding is appropriate, assuming the other elements of *res judicata* can be met.

vi. Adv. No. 19-01027 (Avery v. Bank of America Corporation, Charles C.H. Wu & Associates, APC, and Shu-Shen Liu)

This adversary proceeding involves nine post-petition transfers as follows:

(A) The first transaction occurred on September 6, 2016 and involved the transfer of \$6,806.12 from an account at City National Bank # 3867 (SPA 22), to pay off the balance on Bank of America Visa card #5888. The funds implicated in this transaction were deemed to be Defendant's separate property. (See MOD p.15, Ins. 13-21; p. 16: 9-11; p.29, Ins. 3-8; p.32, Ins. 4-6) Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary adjudication is appropriate, assuming the other elements of *res judicata* can be met.

(B) The next transactions are grouped as a set of three, which occurred on November 7, 2016 (to pay off a balance on Bank of America Visa card #5888 in the amount of \$15,000), December 12, 2016 (to pay off Bank of America card #5888 in the amount of \$10,809.17), and January 12, 2017 (to pay off Bank of America Visa card #4691 in the amount of \$16,004.26). These transactions were deemed to originate from Defendant's separate property. (See 19-01024). Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary adjudication is appropriate, assuming the other elements of *res judicata* can be met.

(C) The next set of transactions occurred on February 8, 2017 and March 6, 2017 in the amounts of \$17,000 and \$15,144.03 respectively. These two transactions went to pay off balances on the Bank of America Visa card #4691. The funds contained in these two transfers from February 8,

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2017 and March 6, 2017, are harder to track. Defendant asserts that the funds for these transactions were sourced from the November 9, 2016 withdrawal of \$30,000 from SPA 16 (which is part of the \$221,701.75).

However, Defendant concedes that this source of funding was only partial. The March 6, 2017 transaction was sourced from both the November 9, 2016 transfer, and from the January 23, 2017 transfer from SPA 11, which as described above, so it is difficult to pin down in terms of character of the funds in that account. Thus, to the extent that these transactions can be traced to the November 9, 2016 transfer from SPA 16, and the court understands that the February 8, 2017 transfer is derived solely from that transfer, those funds have been adjudicated as Defendant's separate property. (See Adv. No. 19-01024).

Defendant asserts that \$7,747.38 of the March 6, 2017 transaction is attributable to SPA 11 funds, and therefore, is open to some question. However, the very existence of this question works against Defendant in a summary judgment based on *res judicata* context. Thus, a summary adjudication should be denied as to this transaction because the court cannot conclude that the funds were already adjudicated. (See adv.#19-01023, Paragraph (D)).

(D) The next set of transactions occurred on April 3, 2017 and May 8, 2017 in the amounts of \$9,122.18 and \$8,699.58 respectively. The \$9,122.18 went to pay off a balance on a Bank of America Visa card #2938, and the \$8,699.58 went to pay off a balance on a Bank of America Visa card #4691. According to Defendant's tracing, these transactions are also sourced from the problematic SPA 11 and the January 23, 2017 transfer of \$30,000 therefrom. Again, as the character of those funds is difficult to pin down in the MOD, the character of these funds is left open to some question. Thus, summary adjudication does not seem appropriate on these transactions. (See adv.#19-01023, Paragraph (D)).

(E) The final transaction occurred on November 16, 2017 in the amount of \$17,000 to pay off a balance on Bank of America Visa card #4691. The funds in this transaction can be traced back to the transfers out of SPA 16 and are Defendant's separate property, which would make summary

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adjudication appropriate. (See 19-01024)

vii. Adv. No. 19-01028 – (Avery v. Charles W.H. Wu & Associates, APC, and Shu-Shen Liu)

In this final adversary proceeding, Plaintiff takes aim at the following two post-petition transfers:

(A) A check drawn from Chase Checking Account #8289 (SPA 17) on November 7, 2017 in the amount of \$71,146.62.

(B) A check drawn from Bank of America Account #4473 (SPA 24) on December 5, 2017 in the amount of \$11,406.15.

Both transactions can be traced back to the transfers out of SPA 16 and are, therefore, Defendant's separate property. (See adv.#19-01024). Thus, it is appropriate to conclude that this transaction arises from the same transactional nucleus of operative facts as in the original adversary proceeding. Summary judgement in this adversary proceeding is appropriate, assuming the other elements of *res judicata* can be met.

IV. Analysis of The Other 3 Factors Constituting Identity of Claims Common to All Adversary Proceedings

1. Same Established Rights Destroyed or Impaired?

The next factor to analyze is whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action. Defendant argues that her rights adjudicated in the original adversary proceeding could be jeopardized because Plaintiff has already begun liquidating the community property accounts. Allowing Plaintiff to prosecute these adversary proceedings under a new legal theory, Defendant argues, could expose Defendant to the risk of double-dipping by Plaintiff. Plaintiff does not directly address this element. Instead, Plaintiff argues that his claims, brought under §549, could not possibly have been adjudicated in the prior adversary proceeding because, at that time, he lacked standing to do so, as did the plaintiffs, the Hong Creditors. Plaintiff believes this is

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accurate because a claim under §549 can only be brought by a trustee, and a trustee had not been appointed during the original adversary proceeding.

But this is not directly responsive to the question of whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of a second action. After all, the original adversary proceeding involved adjudicating the character of money in various disputed accounts. At least some of the post-petition transfers were made from those accounts, which means that the money involved in those transfers is traceable back to those accounts. Thus, it appears that Plaintiff's rights or interests would likely remain unchanged because the court has already made the critical findings as to those accounts. However, for the post-petition transactions that the court could not definitively locate a ruling on the source of the funds, Plaintiff should be allowed to press forward with a §549 claim, unless Defendant can amend the summary judgment motions to draw a clearer map for those funds. This factor is neutral.

2. Same Evidence?

The next factor asks whether the evidence presented in both adversary proceedings is substantially the same, if not identical, and it appears to be for several of the post-petition transfers, except where noted. The evidence consists of testimonial evidence given by Defendant during the trial, and the accompanying bank statements that were used to trace the money contained in the disputed accounts. As the court has already adjudicated the character of the money in these accounts from which the post-petition transfers were made, it is difficult to see what evidence not adduced at trial would be important in this adversary proceeding. Plaintiff does not really explain how the evidence between the two adversary proceedings would differ in any meaningful way.

Plaintiff does argue that the evidence in the form of bank statements tracking the post-petition transactions in the various adversary proceedings is inadmissible hearsay as they have not been properly authenticated. Further, Plaintiff argues that the only declaration that is offered with these bank statements is the declaration of Charles Wu, who, Plaintiff argues, lacks the personal knowledge required to authenticate these documents. Plaintiff also notes that there have been no declarations from any bank regarding the

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authenticity of the banking records.

However, Defendant points out that in the Joint Pre-Trial Stipulation governing the original adversary proceeding, the parties agreed that all banking statements produced in the would be admissible. Defendant also argues that to the extent any evidence in the form of bank statements or the like was not produced at trial in the original case, such evidence is the result of former Plaintiff's post-trial subpoenas. These records, Defendant asserts, have been authenticated because they were accompanied by written and signed statements from bank representatives. Defendant also notes that these post-trial subpoenas were propounded by Plaintiff's former counsel. Further, Defendant herself can authenticate these banking records. Finally, this court, having served as trier of fact and law in the first adversary proceeding, may take judicial notice of the prior proceedings before it. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) ("a court may take judicial notice of its own records in other cases").

For all the above reasons, Defendant persuasively argues that authentication of the records herein should not be an issue. For purposes of the identity of claims analysis, the post-petition transactions all spring from the same 24 disputed accounts, which were the subject of the original trial. Thus, it can be safely concluded that the evidence in the original adversary proceeding and the new adversary proceedings will be substantially based on the same evidence.

3. Infringement of The Same Right(s)?

The remaining factor in the identity of claims analysis asks whether the two suits involve infringement of the same right. Defendant persuasively argues that the original adversary proceeding and this adversary proceeding both have, at their hearts, the question of whether the estate has the right to claw back funds contained in certain disputed accounts and any post-petition transactions involved therein. Again, Plaintiff falls back on his argument that the legal theory and statutory authority for the actions is different. As discussed above, this argument is not particularly compelling to the degree that the court has already adjudicated the character of the funds in the disputed accounts and those funds are turned over.

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Therefore, based on the above factors, the court finds that there exists an identity of the claims involved in the original adversary proceeding and the current adversary proceedings, except where noted.

4. Final Judgment on The Merits

With just a couple of exceptions, noted throughout, the court issued a final judgment on the merits as to the disputed bank accounts and the character of the funds within those accounts. Again, Plaintiff would argue that there is room for disagreement because he proposes proceeding under §549. As noted elsewhere, this argument is not compelling, except on those few post-petition transactions where it could not be conclusively determined that the court issued a ruling on the character of that property allegedly transferred without authority. Therefore, with the few noted exceptions, this court has issued a final judgment on the merits on the character of the funds in the post-petition transactions implicated by these adversary proceedings.

5. Privity Between the Parties

Privity exists if there is sufficient commonality of interest between the plaintiffs in each action. The privity requirement is met when there is virtual representation of the party in the first action, including an identity of interests and adequate representation. *Adams v. State Dep't of Health Servs.*, 487 F.3d 684, 691-92 (9th Cir. 2007). In *Adams*, the Ninth Circuit found that "where a party maintained a close relationship with a party in the first action, and had aligning interests, virtual representation of the second-filed parties was found, and the section action would be barred." *Id.* See also *Tahoe-Sierra Pres. Council*, 322 F.3d at 1081-82 (9th Cir. 2003).

The Hong Creditors were creditors of the bankruptcy estate, indeed far and away the major creditors. The end goal of the Plaintiff, as trustee and disbursing agent, is to collect and disburse the funds held in the estate to its creditors. The bankruptcy estate and Plaintiff were the beneficiary of the relief awarded and a party to the judgment in the original adversary proceeding. Thus, the estate's disbursing agent has a common interest with the Hong Creditors (whom were both represented by Marshack Hays LLP), which puts them in privity for purposes of *res judicata*.

In fact, as Defendant argues, Marshack Hays LLP filed Plaintiff's

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Motion for Order to Extend Time to File Actions under 11 U.S.C. §§ 108, 546(a), and 549(d) in the bankruptcy case. [8:16-bk-11588-TA, Docket No. 680] Plaintiff contends he needs additional time to obtain documents he subpoenaed to various financial institutions, for the benefit of creditors. Plaintiff apparently did not issue subpoenas. Rather, the subpoenas referenced, according to Defendant, were issued in late 2018 on behalf of the Hong Creditors by Marshack Hays LLP. See *Ex. CC, DD*. The two prior Motions for Orders to Extend Time to File Actions Under § 549 sought identical relief and were filed by the Marshack Hays law firm on behalf of the Hong Creditors.

In any event, even if the parties named in the original adversary proceeding and these adversary actions differ, the parties' interests are identically aligned with respect to the funds in the post-petition transactions designated as community property. Thus, privity of the parties exists within the meaning of the above authorities exists. The fact that the origins of some of the post-petition transactions remains hazy does not change the fact that the former Plaintiffs, the Hong Creditors, and the current Plaintiff have perfectly aligned interests as they both seek to maximize the amount of money in the estate eligible for disbursement to creditors.

6. Declaratory Judgment Exception to *Res Judicata*

Defendant argues that because the relief sought in the original adversary proceeding included requests for injunctive and coercive relief, this rendered any possible declaratory judgment exception to *res judicata* inapplicable. In support of this assertion, Defendant cites *Criste v. City of Steamboat Springs*, 122 F. Supp. 2d 1183, 1187 (D. Colo. 2000) where the court noted, "the great weight of authority holds that where a party seeks declaratory as well as coercive relief, the declaratory judgment exception to *res judicata* does not apply." See also 18 Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* § 4446, at 401 (1981) (Reciting as a "relatively secure starting point," that "so long as the request for declaratory relief is combined or followed with coercive relief, the claim preclusion rules

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that apply to actions for coercive relief apply with full force.").

Here, Defendant asserts that Plaintiff is seeking both coercive and injunctive relief that was already sought and litigated in the original adversary proceeding. Indeed, as noted earlier, the court, as part of its judgment, included a turnover order for all funds deemed to be community property. Thus, Defendant appears to be correct that in this situation, any applicable declaratory judgment exception to *res judicata* would not apply here.

V. Conclusion

Defendant succeeds (for the most part) in untangling the messy post-petition transactions and has convinced the court, with a few noted exceptions, that the character of the funds implicated in these post-petitions transactions was conclusively ruled upon by this court in the original adversary proceeding. Plaintiff does not directly dispute Defendant's narrative or tracing of the funds. Instead, Plaintiff argues instead that summary judgment should be denied on the basis that he wants to pursue a § 549 claim, which is a different theory than that which was at issue in the trial of the original adversary proceeding. But what does this add if the character as estate or non-estate has already been determined and that portion constituting property of the estate ordered turned over? The court is not convinced that such a legal theory would lead to a different outcome on a dollars and cents basis than was reached at trial of the original adversary proceeding, except where some of the findings could be made clearer. Plaintiff's attempts to argue that the evidence supporting these summary judgment motions should be ignored for want of authentication is unavailing for the reasons discussed above. Of course, this conclusion rests upon the reported cooperation of Defendants in already turning over the assets deemed property of the estate in the original adversary proceeding. Of course, any resistance or friction in that regard to complete turnover would change the analysis on remedy (i.e. contempt) but still would not raise the need for re-litigation over the character of the property or the duty to give it up to the Plaintiff. Where transfers identified and attacked have already been dealt with in the tracing and in reaching conclusions about net balances of accounts deemed to be estate property, nothing is gained by further litigation,

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but much may be lost in accumulation of unnecessary fees and costs.

Grant in part and deny in part, as noted

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

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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 12-05-19 per order approving stip. between plaintiff and
defendant to cont. s/c entered 12-04-19)**

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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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

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Santa Ana
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Adv#: 8:19-01023 Avery v. Shen Liu

**#5.00 Defendant Shu-Shen Liu's Motion For Summary Judgment
(cont'd from 12-5-19 per order granting plaintiff's mtn for continuance of
defendant's mtn for summary judgment entered 11-19-19)**

Docket 24

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Party Information

Debtor(s):

Long-Dei Liu

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David A Kay
Steven H Zeigen
Michael Simon
Kyra E Andrassy

Defendant(s):

Shu Shen Liu

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Vikram M Reddy

Plaintiff(s):

Wesley H. Avery

Represented By
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Wesley H Avery
Thomas J Polis

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Santa Ana
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Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

#6.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 12-05-19 per order approving stip. between plaintiff and defendants to cont.s/c entered 12-04-19)

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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
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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

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Adv#: 8:19-01024 Avery v. JPMORGAN CHASE BANK et al

**#7.00 Defendant Shu-Shen Liu's Motion For Summary Judgment
(cont'd from 12-5-19 per order granting plaintiff's mtn for continuance of
defendant's mtn for summary judgment entered 11-19-19)**

Docket 28

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Party Information

Debtor(s):

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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

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Thomas J Polis

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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
(con't from 12-05-19 per order approving stip. between plaintiff and defendants to cont. s/c entered 12-04-19)**

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Thursday, February 20, 2020

Hearing Room 5B

10:00 AM

CONT... **Long-Dei Liu**

Chapter 11

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, February 20, 2020

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 Defendant Shu-Shen Liu's Motion For Summary Judgment
(cont'd from 12-5-19 per order granting plaintiff's mtn for continuance of
defendant's mtn for summary judgment entered 11-19-19)**

Docket 25

Tentative Ruling:

Tentative for 2/20/20:
See #3.

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

Thursday, February 20, 2020

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 12-05-19 per order approving stip. between plaintiff and defendants to cont. s/c entered 12-04-19)

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Thursday, February 20, 2020

Hearing Room 5B

10:00 AM

CONT... **Long-Dei Liu**

Chapter 11

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, February 20, 2020

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01026 Avery v. Citibank et al

**#11.00 Defendant Shu-Shen Liu's Motion For Summary Judgment
(cont'd from 12-5-19 per order granting plaintiff's mtn for continuance of
defendant's mtn for summary judgment entered 11-19-19)**

Docket 28

Tentative Ruling:

Tentative for 2/20/20:
See #3.

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, February 20, 2020

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

#12.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 12-05-19 per ord approving stip. between plaintiff & defendants to cont. s/c entered 12-04-19)

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Thursday, February 20, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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, February 20, 2020

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01027 Avery v. Charles C.H. Wu & Associates, APC et al

#13.00 Defendants Charles C.H. Wu & Associates, APC And Shu-Shen Liu's Motion For Summary Judgment
(cont'd from 12-5-19 per order granting plaintiff's motion for continuance of defendant's mtn for summary judgment entered 11-19-19)

Docket 34

Tentative Ruling:

Tentative for 2/20/20:
See #3.

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

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

Thursday, February 20, 2020

Hearing Room 5B

10:00 AM

CONT...

Long-Dei Liu

Wesley H Avery
Thomas J Polis

Chapter 11

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

Thursday, February 20, 2020

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

#14.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 12-05-19 per order approving stip. between plaintiff and defendants to cont. s/c entered 12-04-19)

Docket 1

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Thursday, February 20, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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, February 20, 2020

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

#15.00 Defendants Charles C.H. Wu & Associations APC And Shu-Shen Liu's Motion For Summary Judgment
(cont'd from 12-5-19 per order granting plaintiff's mtn for continuance of defendant's mtn for summary judgment entered 11-19-19)

Docket 24

Tentative Ruling:

Tentative for 2/20/20:
See #3.

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

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

Thursday, February 20, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Wesley H Avery
Thomas J Polis

Chapter 11

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

Thursday, February 20, 2020

Hearing Room 5B

11:00 AM

8:18-13894 Daniel J Powers

Chapter 13

Adv#: 8:19-01046 Powers et al v. Alamitos Real Estate Partners II, LP

**#16.00 TRIAL 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 p/c hrg held on 12-19--19)**

Docket 1

***** VACATED *** REASON: RE-SCHEDULED TO 3-16-20 AT 10:00 A.M. PER COURT'S OWN MTN**

Tentative Ruling:

Tentative for 12/19/19:
Set trial date. Briefs are strongly recommended.

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

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

Thursday, February 20, 2020

Hearing Room 5B

11:00 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**

Friday, February 21, 2020

Hearing Room 5B

10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 11

#1.00 Motion For Order: (1) Authorizing Sale Of Debtors Leased Property Free And Clear Of All Liens; (2) Authorizing Assignment Of The Estates Interest In An Unexpired Lease Pursuant To 11 U.S.C. §365(f); (3) Authorizing And Approving Sale Overbid Procedures Pursuant To 11 U.S.C. § 363(b); (4) Approving The Sale Free And Clear Of Liens And Other Interests Pursuant To 11 U.S.C. § 363(f); (5) Finding Buyer Is A Good Faith Purchaser; And (6) Waiving The 14-Day Stays Of FRBP 6004(h) and 6006(d)
(OST Signed 2-18-20)

Docket 150

Tentative Ruling:

Tentative for 2/21/20:

No tentative. Opposition allowed at hearing per OST.

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad

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

Tuesday, February 25, 2020

Hearing Room

5B

10:30 AM

8:19-14824 Kevin Matthew Patch

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST

Vs.

DEBTOR AND RICHARD A. MARSHACK, CHAPTER TRUSTEE

Docket 8

Tentative Ruling:

Tentative for 2/25/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Kevin Matthew Patch

Represented By
Robert P Taylor

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, February 25, 2020

Hearing Room 5B

10:30 AM

8:17-11435 Kimberlee Ann Fotiades

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-04-20)

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 47

Tentative Ruling:

Tentative for 2/25/20:
Same

Tentative for 2/4/20:
Grant unless APO. The court is not sympathetic on post-petition, post-confirmation defaults.

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning
Barry E Borowitz

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry
Alexander K Lee
Eric P Enciso

Trustee(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 25, 2020

Hearing Room 5B

10:30 AM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS

Docket 47

Tentative Ruling:

Tentative for 2/25/20:
Grant unless current or APO.

Party Information

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Movant(s):

U.S. Bank National Association

Represented By
Sean C Ferry
Eric P Enciso

Trustee(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 25, 2020

Hearing Room 5B

10:30 AM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-4-20)**

WILMINGTON TRUST, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 42

Tentative Ruling:

Tentative for 2/25/20:
Same.

Tentative for 2/4/20:
Same.

Tentative for 1/7/20:
Grant unless current or APO.

Party Information

Debtor(s):

Wendie Lorraine Brigham

Represented By
Christopher J Langley

Movant(s):

Wilmington Trust, National

Represented By
Joseph C Delmotte

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

Tuesday, February 25, 2020

Hearing Room 5B

10:30 AM

CONT... Wendie Lorraine Brigham

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, February 25, 2020

Hearing Room 5B

10:30 AM

8:19-14744 Adam Dennis Fay

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

WEST COAST SERVICING, INC.
Vs.
DEBTOR

Docket 16

Tentative Ruling:

Tentative for 2/25/20:
Grant unless current or APO.

Party Information

Debtor(s):

Adam Dennis Fay

Represented By
Christopher J Langley

Movant(s):

West Coast Servicing, Inc.

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, February 25, 2020

Hearing Room 5B

11:00 AM

8:20-10170 Lorena Archuleta Medina

Chapter 7

#6.00 Order To Appear An Show Cause To Lorena Archuleta Medina Why Case Should Not Be Dismissed For Incorrect Division Per Debtor's Physical Address (**Corona-Riverside**) If Possible Transfer

Docket 1

Tentative Ruling:

Tentative for 2/25/20:
Transfer or dismiss?

Party Information

Debtor(s):

Lorena Archuleta Medina

Represented By
Giovanna M Gallo

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, February 25, 2020

Hearing Room 5B

11:00 AM

8:19-13777 Mario Anthony Madrid, Jr and Margarita Madrid

Chapter 7

#7.00 Debtors Motion To Vacate Dismissal

Docket 35

Tentative Ruling:

Tentative for 2/25/20:
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

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, February 25, 2020

Hearing Room 5B

11:00 AM

8:17-11936 Chong Ae Dugan

Chapter 7

#8.00 Trustee's Final Report And Applications For Compensation:

WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE

WEILAND GOLDEN GOODRICH, LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, CHAPTER 7 TRUSTEE'S ACCOUNTANT

U.S. BANKRUPTCY COURT - CHARGES

Docket 73

Tentative Ruling:

Tentative for 2/25/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Chong Ae Dugan

Represented By
Michael H Yi

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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

Tuesday, February 25, 2020

Hearing Room 5B

11:00 AM

8:18-12051 Michael-Reese Enterprises Inc.

Chapter 7

#9.00 Trustee's Final Report And Applications For Compensation:

WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, CHAPTER 7 TRUSTEE'S ACCOUNTANT

INTERNATIONAL SURETIES, LTD, OTHER EXPENSES

Docket 48

Tentative Ruling:

Tentative for 2/25/20:

Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Michael-Reese Enterprises Inc.

Represented By
Eliza Ghanooni

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden

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

Tuesday, February 25, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#10.00 Motion For Order Approving Stipulation Between Chapter 7 Trustee And HMC Assets, LLC As Trustee Of The CAM XV Trust

Docket 406

Tentative Ruling:

Tentative for 2/25/20:

Grant in part:

1. CAM XV Trust's claims against the bond and Lexington are not subject to the automatic stay.
2. CAM XV Trust may pursue any remedies against Lexington and the bond but may not pursue any claim against Debtor or seek enforcement of any judgment against Debtor absent further order of this court.
3. The Stipulation may be executed in one or more counterparts and facsimile or electronic signature may be used in filing this document.

Deny the following as moot:

1. Relief from stay under 11 U.S.C. § 362(d)(1)
2. Waiver of the 14-day stay under FRBP 4001(a)(3)

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, February 25, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#11.00 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
(cont'd from 12-17-19 per order approving stip. re: claim no. 32-2 entered 11-27-19)

Docket 245

Tentative Ruling:

Tentative for 2/25/20:

These nominally are characterized as claims objections. The main disputed issue common to Calendar #s 11, 25, and 28 (which are discussed in a single memorandum because they overlap) are the amounts of the allowable portions of the claims as it appears these claims include accrued interest (and perhaps fees) to which they may not be entitled. Lexington National Insurance Corporation ("Lexington"), one of several surety companies that provided Foreclosure Bonds for foreclosure sales conducted by Debtor in Maryland and Washington D.C. has filed numerous objections to claims against Debtor's estate. The curiosity arises from the fact that several of the claimants have agreed to continue the hearing scheduled for February 25, out to April 7, which explains why so many matters are vacated in this case. However, three creditors, HMC Assets, LLC, as Trustee of the CAM XV Trust (Claim# 32-2), Select Portfolio Servicing, Inc. (Claim #67), and Carrington Mortgage Services (Claim #70) have decided to press ahead in defending their claims, arguing that they are entitled to the entirety of their claims, even though Lexington has made a fairly compelling argument that they are only entitled to a portion of them, as will be discussed further below.

The BP Fisher Law Group, LLP ("Debtor") was a law firm that was primarily in the business of handling residential foreclosures in the Mid-Atlantic region. The Trust Fund Claims (as defined below) that are the subject

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

Tuesday, February 25, 2020

Hearing Room

5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

of the Trust Fund (as defined below) and payment by the Chapter 7 Trustee pursuant to the Trust Fund Settlement (as defined below) arise out of foreclosures conducted by Debtor which allegedly resulted in Debtor receiving monies in trust that it allegedly failed to remit to the appropriate parties.

In connection with the foreclosure sales that were handled by Debtor, there are two types of parties who may possess claims arising out of the alleged misappropriation of foreclosure sale trust fund monies that were held by Debtor: (A) a Buyer who provided a Buyer Deposit to Debtor when the closing on the foreclosure sale did not actually take place for reasons not related to the Buyer's default (i.e., the Buyer Deposit was not returned to them); and (B) a lender in connection with foreclosures sales where a closing took place, an Auditor's Report was ratified, and Debtor did not disburse the net foreclosure sale trust fund monies as required by the ratified Auditor's Report.

Lexington's argues that the trust fund claims are limited to actual trust fund monies that were remitted to Debtor but not paid to rightful claimants. The Buyers are only entitled to a trust fund claim in the exact amount of the Buyer Deposit that was not returned and a lender is only entitled to a trust fund claim in the exact amount of trust fund monies that were not paid to it as set forth in the Foreclosure Court's order ratifying the Auditor's Report. Claimants are not entitled to trust fund claims for any other alleged damages or claims (i.e., no interest, attorney's fees, etc.) – their trust fund claims are limited to the exact amount of trust fund monies that were received by Debtor and later were supposed to be delivered to them. In other words, there is a difference between a genuine trust fund claim, which by its definition is limited to a certain fund misappropriation, and consequential damages claims against the Debtor.

On July 19, 2019, several months after Debtor filed its petition, the Chapter 7 Trustee (formerly Chapter 11 Trustee (the "Trustee") filed his Motion to Approve Compromise Under FRBP 9019 and attached

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

Tuesday, February 25, 2020

Hearing Room

5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

memorandum (the "Trust Fund Motion") (Docket Entry # 146) seeking approval of a settlement (the "Settlement") with Debtor's principal and his related entity Plutos Sama Holdings, Inc. Pursuant to the Trust Fund Motion, \$3,412,000 that was held in one of BP's bank accounts were characterized as trust fund monies arising out of various foreclosure sales. As part of the Settlement, BP's principal and related entity delivered \$4,000,000 to the Trustee and ultimately the \$3,412,000 of trust fund monies (the "Trust Fund") will be used to only pay trust fund claims, i.e., claims arising out of missing foreclosure sale proceeds that were delivered to BP in trust but never delivered to the beneficiary (i.e., a lender, Buyer, junior lienholder, or borrower, as appropriate) (the "Trust Fund Claims"). As the court reads it, this fund was never designed to be a comprehensive payment of all that victims *qua* creditors might be entitled to as consequential damages; it was designed purely to refund that which were never truly Debtor's monies. On August 14, 2019, the court entered the Order Granting Motion to Approve Compromise Under Rule 9019 (Docket Entry # 195) (the "Settlement Order") establishing the procedure for filing a trust fund proof of claim. Pursuant to the Settlement Order, the trust fund claim bar date was set as September 16, 2019.

Lexington persuasively argues that the Trust Fund Agreement put into place a claim process solely for Trust Fund Claims that permitted creditors whose money was being held in trust by the Debtor (but not remitted to such creditor) to file a Trust Fund Claim in the amount of the trust fund money that the Debtor held, but failed to remit to such creditor. In effect, Lexington asserts, Trust Fund Creditors are being treated differently than general unsecured creditors by way of the Trust Fund Settlement vis a vis the Trust Fund because trust fund money is not property of the bankruptcy estate. See *In re Lopez Roman*, 599 B.R. 87, 94 (Bankr. C.D. Cal. 2019) ("funds that are deposited into an escrow account by a debtor, for the benefit of others cannot be characterized as property of the estate"). Therefore, Trust Fund Claimants have a senior interest in trust fund money, but only in the actual amount of

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trust fund money that the Debtor was holding for Trust Fund Claimants. As such, Lexington argues, Creditors are free to assert that they have suffered additional damages as a result of the failure of the Debtor to timely remit trust fund money, but these additional damages will be nothing more than general unsecured claims against property of the estate.

As the docket for February 25, 2020 shows, there were many hearings on objections to claims scheduled. However, Lexington asserts that it has been successful in resolving many of its objections and will be filing stipulations confirming the actual claim amounts, the three creditors mentioned above being the exceptions.

As to the claims of these three creditors, Lexington argues that they are attempting to include general unsecured damage claims (e.g. interest) as part of their Trust Fund Claims in violation of the Trust Fund Settlement. Further, Lexington argues that some of these creditors are attempting to assert Trust Fund Claims for monies that do not belong to them, and that these creditors do not even know how much of their trust fund monies Debtor received and allegedly failed to remit to them. Select Portfolio (Claim #67) and Carrington (Claim #70) have not been able to confirm the exact amounts or provide adequate documentation to support their claims, which is highly problematic. Lexington has propounded discovery to fill in this missing information.

Obviously, there is a great deal more going on here than can readily be resolved in a summary proceeding like a claims objection. Lexington requests that these hearings be treated as status conferences pursuant to LBR 3007-1(b)(5), which gives the court discretion to "treat the initial hearing as a status conference." This will allow the parties to hash out any additional discovery and evidentiary issues that should be addressed prior to an evidentiary hearing scheduled for April 7, 2020. This does seem to be an appropriate suggestion, as in a case like this, more clarity and more

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information is preferable. All parties involved would likely benefit from treating these hearings as status conferences in contested proceedings. If the parties are unable to agree, at the continued status conference deadlines for discovery and law and motion will be set, possible referral to mediation discussed and a pretrial conference scheduled.

Continue as status conference.

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
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8:19-10158 BP Fisher Law Group, LLP

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#12.00 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.
(cont'd from 12-17-19 per order approving stip. between Lexington National Insurance Corp. & Municipal Employee Credit Union of Baltimore, Inc adjourning the hrg on the obj. to mtn. to disallow proof of claim no. 35)

Docket 246

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
MUNICIPAL EMPLOYEES CREDIT UNION OF BALTIMORE, INC. AND
MOTION TO DISALLOW PROOF OF CLAIM NO. 35 ENTERED 2-07-20

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
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#13.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 50 Filed By Stearns Lending, LLC
(cont'd from 12-17-19 per order approving stip. re: claim no. 50)

Docket 248

***** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION ADJOURNING
THE HEARING ON THE OBJECTIONS TO MOTION TO DISALLOW
PROOF OF CLAIM NO. 50 ENTERED 2-11-20**

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

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#14.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 51 Filed By Lakeview Loan Servicing, LLC (cont'd from 12-17-19 per order approving stip re: claim #51 entered 11-27-19)

Docket 249

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M. PER ORDER APPROVING SECOND STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND LAKEVIEW LOAN SERVICING, LLC ADJOURNING THE HEARING ON THE MOTION TO DISALLOW PROOFS OF CLAIM NO. 51 ENTERED 2-11-20

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

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#15.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 52 Filed By First Federal Bank of Florida (cont'd from 12-17-19 per order approving stip. re: claim no. 52 entered 11-27-19)

Docket 250

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M. PER ORDER APPROVING SECOND STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND FIRST FEDERAL BANK OF FLORIDA ADJOURNING THE HEARING ON MOTION TO DISALLOW PROOF OF CLAIM NO. 52 ENTERED 2-11-20

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

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8:19-10158 BP Fisher Law Group, LLP

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#16.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 53 Filed By Lakeview Loan Servicing, LLC (cont'd from 12-17-19 per order approving stip. re: claim no. 53 entered 11-27-19)

Docket 251

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
LAKEVIEW LOAN SERVICING, LLC ADJOURNING THE HEARING
ON MOTION TO DISALLOW PROOF OF CLAIM NO. 53 ENTERED 2-11
-20

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

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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. 54 Filed By Lakeview Loan Servicing, LLC (cont'd from 12-17-19 per order approving stipulation re: claim no. 54 entered 11-27-19)

Docket 252

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M. PER ORDER APPROVING SECOND STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE ORPORATION AND LAKEVIEW LOAN SERVICING, LLC ADJOURNING THE HEARIN ON OBJECTION TO MOTION TO DISALLOW PROOF OF CLAIM NO. 54 ENTERED 2-11-20

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
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8:19-10158 BP Fisher Law Group, LLP

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#18.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 59 Filed By Loancare, LLC
(cont'd from 12-17-19 per order approving stip. re: claim no. 59 entered 11-27-19)

Docket 253

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
LOANCARE, LLC ADJOURNING THE HEARING ON OBJECTION TO
MOTION TO DISALLOW PROOFS OF CLAIM NO. 59 ENTERED 2-11-20

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

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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. 60 Filed By Loancare LLC
(cont'd from 12-17-19 per order approving stip. re: claim no. 60 entered 11-27-19)

Docket 254

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN LEXINGTON
NATIONAL INSURANCE CORPORATION AND LOANCARE, LLC
ADJOURNING THE HEARING ON THE OBJECTIONS TO MOTIONS
TO DISALLOW PROOF OF CLAIM NO. 60 ENTERED 2-11-20

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

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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. 61 Filed By Lakeview Loan Servicing, LLC (cont'd from 12-17-19 per order approving stip. re: claim no. 61 entered 11-27-19)

Docket 255

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M. PER ORDER APPROVING SECOND STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND LAKEVIEW LOAN SERVICING, LLC ADJOURNING THE HEARING ON THE OBJECTIONS TO MOTIONS TO DISALLOW PROOF OF CLM NO. 61 ENTERED 2-11-20

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
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8:19-10158 BP Fisher Law Group, LLP

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#21.00 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
(cont'd from 12-17-19 per order approving stip. re: claim no. 62 entered 11-27-19)

Docket 256

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
NATIONSTAR MORTGAGE LLC D/B/A CHAMPION MORTGAGE
COMPANY AND MOTION TO DISALLOW PROOF OF CLAIM NO. 62
ENTERED 2-07-20

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
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8:19-10158 BP Fisher Law Group, LLP

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#22.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 64 Filed By Caliber Home Loans, Inc.
(cont'd from 12-17-19 per order approving stip re: claim 64 entered 11-27-19)

Docket 257

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND CALIBER
HOME LOANS, INC. ADJOURNING THE HEARING ON MOTION TO
DISALLOW PROOF OF CLAIM NO. 64 ENTERED 2-11-20

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
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#23.00 Lexing National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC (cont'd from 12-17-19 per order approving stip. between Lexington National Insurance Corporation And Specialized Loan Servicing LLC Adjourning The Hrg on the limited objection to and mtn to disallow proof of claim no. 65)

Docket 258

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
SPECIALIZED LOAN SERVICING LLC - MOTON TO DISALLOW
PROOF CLAIM NO. 65 ENTERED 2-07-20

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
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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. 66 Filed By Statebridge Company, LLC (cont'd from 12-17-19 per order approving stip. re: claim no. 66 entered 11-27-19)

Docket 259

*** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M. PER ORDER APPROVING SECOND STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND STATEBRIDGE COMPANY, LLC ADJOURNING THE HEARING ON MOTION TO DISALLOW PROOF OF CLAIM NO. 66 ENTERED 2-11-20

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

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8:19-10158 BP Fisher Law Group, LLP

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#25.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select Portfolio Servicing, Inc. **(cont'd from 12-17-19 per order approving stip. re: obj to and mtn to disallow proof of claim no. 67 - relates to docket no. 260 entered 12-2-19)**

Docket 260

Tentative Ruling:

Tentative for 2/25/20:
See #11

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
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8:19-10158 BP Fisher Law Group, LLP

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#26.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof of Claim No. 68 Filed By Ditech Financial, LLC
(cont'd from 12-17-19 per order approving stip. to cont. proofs of claims # 68, 69 and 71- [relates to dkt. no.s 261, 262 and 264] entered 11-22-19)

Docket 261

***** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND DITECH
FINANCIAL, LLC NEWEREZ, LLC AND MOTION TO DISALLOW
PROOFS OF CLAIM 68,69, AND 71 ENTERED 2-07-20**

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
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8:19-10158 BP Fisher Law Group, LLP

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#27.00 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
(cont'd from 12-17-19 per order approving stip. to cont. proofs of claims # 68, 69 and 71- [relates to dkt. no.s 261, 262 and 264] entered 11-22-19

Docket 262

***** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND DITECH
FINANCIAL LLC NEWREZ, LLC AND TO DISALLOW PROOFS OF
CLAIM 68,69 AND 71 ENTERED 2-07-20**

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
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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. 70 filed by Carrington Mortgage Services, LLC
(cont'd from 12-17-19 per order approving stip. re: clm no. 70 [related to docket no. 263 entered 12-05-19])

Docket 263

Tentative Ruling:

Tentative for 2/25/20:
See #11

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
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#29.00 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.
(cont'd from 12-17-19 per order approving stip. to cont. proofs of claims # 68, 69 and 71- [relates to dkt. no.s 261, 262 and 264] entered 11-22-19)

Docket 264

***** VACATED *** REASON: CONTINUED TO 4-07-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND DITECH
FINANCIAL LLC AND MOTION TO DISALLOW PROOFS OF CLAIM
68,69 AND 71 ENTERED 2-07-20**

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
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10:00 AM

8:19-11458 2045 E Highland, 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)
(cont'd from 1-08-20)**

Docket 54

Tentative Ruling:

Tentative for 2/26/20:
Status?

Tentative for 1/8/20:
No tentative. See #2.

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.

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

Movant(s):

United States Trustee (SA)

Represented By
Michael J Hauser

**United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

**#2.00 Debtor's Disclosure Statement Describing Chapter 11 Plan Of Reorganization
(con't from 1-08-20)**

Docket 64

Tentative Ruling:

Tentative for 2/26/20:

This is the debtor's motion to approve as adequate its revised Disclosure Statement to accompany its First Amended Plan. The Disclosure Statement is still not adequate for at least the following reasons:

1. Sale of the real property in San Juan Capistrano, the premises for debtor's business, is promised no later than February 28, 2020. But just how this is to be accomplished without a §363(f) order is not explained and it is obvious that a plan providing for same is not yet possible. This needs better explanation and/or a more realistic timetable.
2. The plan still needs a better discussion as to how the equity interests are being treated. Presumably this belongs in Class 4 and there should be there a discussion about the absolute priority rule and the contribution of \$20,000 in new value. Further, some discussion as to how/why that is the proper number is necessary given the requirements of "market testing" found in *Bank of America NT & SA v. 203 N. La Salle Street Partnership* 526 U.S. 434 (1999) would be in order.
3. The description about discharge at 21:1-3 should be corrected in view of §1141(d)(3) as suggested by the United States Trustee.
4. As indicated in the opposition of Seacoast Commerce Bank a better job could be done explaining how this plan is feasible if, as Seacoast

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Chapter 11

argues, only about \$13,000 is available on a net basis for monthly debt service after costs of operation. Normally, feasibility is a confirmation issue, but this would be the opportunity to explain in simple terms how this works.

5. Some discussion about the alleged \$150,000 loan to an insider needs to be discussed and if it is not to be pursued, why.
6. A consistent explanation as to whether Northeast Bank is truly a fully secured creditor at \$93,118 including post-petition assets is necessary, in order to evaluate the best interest of creditors test, as Seacoast argues.
7. Some discussion about the pending litigation against Seacoast is also necessary. Is this to be pursued post confirmation? If so, how is the litigation to be funded and what goal is sought? If a judgment were achieved what becomes of the proceeds?

Deny

Tentative for 1/8/20:

This is debtor's motion for approval of disclosure statement as required under §1125(a)(1) as containing "adequate information." An adequacy finding is opposed in oppositions filed by both the UST and Seacoast Commerce Bank. The oppositions are both well taken, and the points raised need not be restated at elaborate length here. The court is primarily concerned about the following fundamental deficiencies:

1. The plan clearly violates the absolute priority rule found at §1129(b)(2) (B)(ii). The plan proposes only 1% to unsecured creditors in installments yet the principals retain governance and stock ownership. Seacoast, which itself may be the largest unsecured creditor, plans to vote against. No new value is mentioned. So, unless something else

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2045 E Highland, LLC

Chapter 11

is true this plan is patently unconfirmable, and distribution of a disclosure statement on such a plan is a waste of time and resources. While the court does not usually prejudge confirmation issues, this one is too fundamental to ignore, and so either amendment or at least explanation is required;

2. The proposed treatment of Seacoast 's secured claim is also very problematic. Debtor proposes either to cramdown a payment over 30 years at 5% or a "consensual sale" of the underlying real estate collateral. But the timing and conditions of the proposed sale are unstated, not made subject to conditions and are, thus, illusory. Can the debtor sell whenever it feels like it? Whenever in future it thinks the market has appreciated enough, even if that takes years, or never? The alternative treatment is also a non-starter. An effective 100% loan to value claim is far riskier than a more conventional loan usually made as a percentage of value. Consequently, the increased risk element must be accommodated (paid for), and anything less is a legally impermissible imposition of the risk upon the lender. See *In re North Valley Mall* ,432 B.R, 825 (Bankr. C.D. Cal. 2010). Although this is usually a confirmation issue, 5% is far too low for a commercial loan under any reasonable economic analysis, i.e. prime rate is 4.75% and must be "built up" from there even under a *Till* analysis. *North Valley Mall* is not the only analysis relied upon by courts, but this court happens to believe it is the most appropriate in a business, real estate context. Therefore, the court will not approve dissemination of disclosure upon such a patently unconfirmable plan.
3. Feasibility is very questionable. Again, normally this is judged at confirmation, but the court does not ignore that the MORS show a generally declining cash position, and this is while there has been a 9-month moratorium in debt payments. Had even reduced payments been made the debtor would be by now out of money. What, if

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CONT... **2045 E Highland, LLC**
anything, is expected to change this outlook?

Chapter 11

Deny

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

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8:19-11965 Play 4 Fun, Inc.

Chapter 11

#3.00 U.S. Trustee Motion To Dismiss Or Convert Case To A Chapter 7 Pursuant To 11 U.S.C. §1112(B)

Docket 110

Tentative Ruling:

Tentative for 2/26/20:

The failure to meet the timeline ordered by the court and the accrual of unpaid, post-petition obligations, are very troubling. However, finally there is a plan and disclosure on file, and the hearing March 25 is an opportunity to evaluate.

Continue to March 25, 2020 @ 10:00AM.

Party Information

Debtor(s):

Play 4 Fun, Inc.

Represented By
Paul J Kurtzhall

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8:20-10168 Paul Se Won Kim

Chapter 11

#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual

Docket 1

Tentative Ruling:

Tentative for 2/26/20:

Deadline for filing plan and disclosure statement: December 20, 2020.

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

Debtor to give notice of claims bar deadline by: March 1, 2020.

Party Information

Debtor(s):

Paul Se Won Kim

Pro Se

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8:20-10269 Rafik Youssef Kamell

Chapter 11

#5.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.

Docket 1

Tentative Ruling:

Tentative for 2/26/20:

Deadline for filing plan and disclosure statement: July 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: March 1, 2020.

Party Information

Debtor(s):

Rafik Youssef Kamell

Represented By
Robert P Goe

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8:20-10295 Katangian Vail Avenue Property Investments, LLC a

Chapter 11

#6.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

Tentative Ruling:

Tentative for 2/26/20:

Deadline for filing plan and disclosure statement: August 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: March 1, 2020.

Party Information

Debtor(s):

Katangian Vail Avenue Property

Represented By
Michael R Totaro

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8:18-10486 Ron S Arad

Chapter 11

**#7.00 STATUS CONFERENCE RE: Chapter 11 Plan
(con't from 12-11-19)**

Docket 206

Tentative Ruling:

Tentative for 2/26/20:

1. Refer to mediation over extent of disputed IRS and Citizen's Bank liens. Order appointing mediator to be lodged by debtor within 10 days. One day of mediation to be completed by May 1, 2020.

2. Continue status and disclosure conference to June 4, 2020 at 10:00AM, by which time clear direction is to be given as to whether the case will conclude by plan, or convert.

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?

Tentative for 9/11/19:

Off calendar? See #9

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 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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8:18-10486 Ron S Arad

Chapter 11

Adv#: 8:18-01080 Arad v. Arad et al

- #8.00** 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 12-11-19)

Docket 1

Tentative Ruling:

Tentative for 2/26/20:
Status? Would ordered mediation help?

Tentative for 12/11/19:
Further status report is needed. For example, IRS is still a defendant.

Tentative for 9/11/19:
Off calendar? See #9

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.

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

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CONT... Ron S Arad

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Plaintiff(s):

Ron S Arad

Represented By

G Bryan Brannan

William H Brownstein

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8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

**#9.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 11-06-19)**

Docket 1

Tentative Ruling:

Tentative for 2/26/20:

Continue status conference about 90 days at which time the court expects a decision about whether there is any purpose served by remaining in Ch. 11.

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.

Party Information

Debtor(s):

Barley Forge Brewing Company,

Represented By
M Douglas Flahaut

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8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

#10.00 First Interim Fee Application For Allowance Of Compensation And Reimbursement Of Expenses For The Period 10/6/2019 to 12/31/2019:

ARENT FOX LLP, GENERAL COUNSEL

FEE:	\$91,250.00
EXPENSES:	\$4,788.57

Docket 96

Tentative Ruling:

Tentative for 2/26/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Barley Forge Brewing Company,

Represented By
M Douglas Flahaut
Christopher K.S. Wong

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8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

**#11.00 Emergency Motion For An Order Authorizing Use Of Cash Collateral
(cont'd from 11-06-19)**

Docket 5

Tentative Ruling:

Tentative for 2/26/20:
Status?

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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8:20-10143 Bridgemark Corporation

Chapter 11

#12.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

Tentative Ruling:

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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8:20-10143 Bridgemark Corporation

Chapter 11

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

PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR

Docket 53

Tentative Ruling:

Tentative for 2/26/20:

If all that is requested is that both sides be free to complete the state court action, including post trial motions and appeals, to final orders, that is appropriate. Enforcement steps will require further orders of this court.

Grant as clarified.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

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8:20-10143 **Bridgemark Corporation**

Chapter 11

#14.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)

Docket 54

Tentative Ruling:

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

1. Basic Background Facts

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately \$42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than \$25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not appear to be any other debts listed as disputed, contingent, or unliquidated. The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court

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trial this testimony was elicited:

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"We cannot pay the 27 million We have no ability to pay any of this. ... I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done." Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the \$27 million in compensatory damages at \$1 million per year, interest-free, over 27 years. See *Id.* at 3156:20-23 ["We can't pay it. ... If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.... It just goes down and down and down." *Id.* at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

2. Motion to Dismiss & Relief from Stay Standards

Section 1112(b) of the Bankruptcy Code provides:

"[O]n request of a party in interest, and after notice and a hearing, the

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court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id.* § 1112(b)(4)(A), and "gross mismanagement of the estate," *Id.* § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section ... for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.'"]. Thus, the shorthand phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or feelings. Instead, the question is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on

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Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.*

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. *See e.g., In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the litigation"; and
- "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes

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and citations omitted).

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"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood)*, 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

3. Was Debtor's Petition Filed for a Proper Purpose?

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917-18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013) where the court found:

Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the judgment or cover the cost of a supersedeas bond. The bankruptcy

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court found that the Fraud Judgment amounted to over \$12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id.* It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation.'" *Marshall*, 721 F.3d at 1048 (quoting 298 B.R. at 681)). PDC persuasively argues that it would be inappropriate to infer a broader rule from *Marshall*. PDC argues with some persuasion that the other cases cited by Debtor were ones in which the courts

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based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id.* at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id.*

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately \$3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id.* at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id.* The debtor later amended his plan to provide that if the judgment were upheld on appeal, he would liquidate his assets and give the proceeds to the judgment creditor. *Id.* The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of the circumstances" warranted dismissal of the case for cause. *Id.* at *4.

PDC argues that Debtor has admitted in the authorizing resolution

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attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11" Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. After all, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to make a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), *aff'd*, 565 B.R. 527 (S.D.N.Y. 2017), *aff'd*, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets" As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26, 2011).

PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with competing demands to Debtor's assets. All other claims against Debtor are *de minimis* relative to the Judgment, and also appear to be undisputed. Cf. *In*

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10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

re Mense, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately \$4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than \$700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a reorganization is likely not feasible due to the enormous judgment debt and Debtor's ever diminishing product source. The court is also not impressed

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CONT... **Bridgemark Corporation**

Chapter 11

with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable extension to answer these questions about just how probable a reorganization is or can be despite these obstacles. In this the court is

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CONT... **Bridgemark Corporation**

Chapter 11

uninterested in platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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10:00 AM

8:18-14436 Juan Jesus Rojas de Borbon

Chapter 11

#15.00 Motion For Order Approving Disclosure Statement As Containing Adequate Information Pursuant To Bankruptcy Code Section 1125 (A)(1)(B) **(con't from 12-04-19)**

Docket 50

Tentative Ruling:

Tentative for 2/26/20:

Assuming an amendment providing a timeline for when the bankruptcy court in Kentucky might approve his employment, the D.S. may be distributed and a confirmation date set.

Tentative for 12/4/19:

New plan to be filed not later than January 30, 2020.
Continue to February 26, 2020 at 10:00AM.

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.

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CONT... Juan Jesus Rojas de Borbon

Chapter 11

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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10:00 AM

8:18-13526 Giau Van Le

Chapter 11

**#16.00 Post -Confirmation Hearing Re: Chapter 11 Plan of Reorganization
(set from order confirming ch 11 plan entered 6-17-19)
(con't from 9-25-19)**

Docket 41

Tentative Ruling:

Tentative for 2/26/20:
Will administrative closing be sought? If not, schedule follow-up conference
in about 180 days.

Tentative for 9/25/19:
Continue for further status conference to February 26, 2020 at 10:00 a.m.
Appearance is optional.

Party Information

Debtor(s):

Giau Van Le

Represented By
Michael Jones
Sara Tidd

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Wednesday, February 26, 2020

Hearing Room 5B

10:00 AM

8:20-10268 Fariborz Zanjane Babae and Malihe P. Babae

Chapter 7

#17.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Chapter 7 Trustee's Motion for Order Extending the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3)(B) **(OST Signed 2-21-20)**

Docket 10

Tentative Ruling:

Tentative for 2/26/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

Fariborz Zanjane Babae

Represented By
Christopher J Langley

Joint Debtor(s):

Malihe P. Babae

Represented By
Christopher J Langley

Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

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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 11-07-19)

Docket 83

Tentative Ruling:

Tentative for 2/27/20:

Status conference continued to May 28, 2020 at 10:00AM. Looks like this case is drifting. Continue one last time.

Tentative for 11/7/19:

See #15 at 11:00AM. Are parties prepared to set deadlines on complaint issues?

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

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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 -

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

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CONT... Point Center Financial, Inc. Chapter 7

Park Scottsdale, LLC	Pro Se
Encinitas Ocean Investments, LLC	Pro Se
El Jardin Atascadero Investments, 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
RENE ESPARZA	Represented By Nancy A Conroy
DOES 1-30, inclusive	Pro Se
16th Street San Diego Investors, 6th & Upas Investments, LLC	Pro Se
Altamonte Springs Church	Pro Se
Andalucia Investors, LLC	Pro Se

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CONT... Point Center Financial, Inc.

Chapter 7

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
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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 Gurflein Jack A Reitman
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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 12-05-19 per order approving stip. to cont. s/c entered 12-05-19)

Docket 1

Tentative Ruling:

Tentative for 2/27/20:

Status conference continued to May 28, 2020 at 10:00AM. Some of these cases appear to be drifting. Continue one last time.

Tentative for 12/5/19:

Why no status report?

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

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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

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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

#3.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative, Avoidance and Recovery of Preferential Transfers -
(con't from 11-07-19)

**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 2/27/20:
Dismiss per trustee's request?

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?

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10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

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?

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

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10:00 AM

CONT... **Point Center Financial, Inc.**
proceedings extended in interim, per trustee's request.

Chapter 7

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

Party Information

Debtor(s):

Point Center Financial, Inc.	Represented By Robert P Goe Jeffrey S Benice Carlos F Negrete
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Defendant(s):

POINT CENTER MORTGAGE	Pro Se
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Plaintiff(s):

Howard Grobstein, as Chapter 7	Represented By Roye Zur
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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

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CONT... Point Center Financial, Inc.

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

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 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
(con't from 12-19-19)

Docket 42

***** VACATED *** REASON: CONTINUED TO 3-26-20 AT 2:00 P.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
HEARING ENTERED 1-9-20**

Tentative Ruling:

Tentative for 12/19/19:

No status report? Do the parties propose waiting on the appeal?

Tentative for 10/24/19:

See #s 9 & 10

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.

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10:00 AM

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

Chapter 11

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 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

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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

#5.00 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 1-9-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-12-20 AT 10:00 A.M.
PER ORDER RE: STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 2-26-20**

Tentative Ruling:

Tentative for 1/9/20:
See #3

Tentative for 12/19/19:
See #2.1

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.

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10:00 AM

CONT... Catherine M Haretakis

Chapter 11

Party Information

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

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Hearing Room 5B

10:00 AM

8:19-12706 Peter G Vann

Chapter 7

Adv#: 8:19-01159 Signal Ventures, Inc., v. Vann

**#6.00 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)
(Cont'd from 10-24-19 per order approving stip. to cont. s/c entered 10-22-19)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF AN ADVERSARY PROCEEDING THAT
DOE NOT INVOLVE CLAIMS FILED 2-19-20**

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

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10:00 AM

8:17-12900 Harv Wyman

Chapter 7

Adv#: 8:19-01171 NAYLOR v. THE EVERGREEN ADVANTAGE, LLC et al

#7.00 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)
(cont'd from 2-13-20 per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for 2/27/20:

Deadline for completing discovery: August 1, 2020

Last date for filing pre-trial motions: August 24, 2020

Pre-trial conference on: September 24, 2020 at 10:00AM

Joint pre-trial order due per local rules.

Tentative for 11/14/19:

Status conference continued to February 13, 2020 at 10:00AM. Appearance optional.

Party Information

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

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10:00 AM

CONT... Harv Wyman

Chapter 7

Joint Debtor(s):

Kim M. Wyman

Represented By
Thomas J Polis

Plaintiff(s):

KAREN SUE NAYLOR

Represented By
William Malcolm

Trustee(s):

Karen S Naylor (TR)

Represented By
Christina J O
Arturo M Cisneros

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10:00 AM

8:19-14307 Roadking Trucking, LLC

Chapter 11

Adv#: 8:19-01223 Roadking Trucking, LLC v. Alvarado et al

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid Preferential Transfers
Pursuant to 11 USC Section 547
(another summons issued on 11-26-19)**

Docket 1

Tentative Ruling:

Tentative for 2/27/20:

Deadline for completing discovery: June 1, 2020

Last date for filing pre-trial motions: June 22, 2020

Pre-trial conference on: July 2, 2020 at 10:00AM

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

Defendant(s):

Luis Solorzano	Pro Se
Wilber Sandoval	Pro Se
Ricardo Roman	Pro Se
Marco Rojas	Pro Se
Bernardino Rojas	Pro Se
Edson Reyes	Pro Se
Gregorio Ramirez	Pro Se
Mariano Montano	Pro Se
Edgar J. Reyes Mendoza	Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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10:00 AM

CONT... Roadking Trucking, LLC

Chapter 11

Cruz Mendoza	Pro Se
Jose Andres Majano	Pro Se
Edwin Majano	Pro Se
Victor Loasigas	Pro Se
Adolfo Hernandez	Pro Se
Agustin Gutierrez	Pro Se
Rafael Ramos-Funes	Pro Se
Carlos Estrada	Pro Se
Carlos Delgado	Pro Se
Luis Carranza	Pro Se
Abner Aparicio	Pro Se
Lucy Alvarado	Pro Se
Ana Vasquez	Pro Se

Plaintiff(s):

Roadking Trucking, LLC

Represented By
Donald W Reid
Christopher J Langley

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

Thursday, February 27, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

- #9.00** STATUS CONFERENCE RE: Complaint For:
- I. Denial Of Discharge Pursuant To 11 U.S.C. Sec. 727(a)(2-7);
 - II. Turnover Of Real Property Pursuant To 11 U.S.C. Section 542;
 - III. Turnover Of Funds Pursuant To 11 U.S.C. Sec. 542 & 543;
 - IV. Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. Sec. 547;
 - V. Avoidance Of A Preferential Transfer Pursuan To 11 U.S.C. Sec. 548;
 - VI. Avoidance Of A Post-Petition Transfer Pursuant To 11 U.S.C. Sec. 549

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-12-20 AT 10:00 A.M.
PER ANOTHER SUMMONS ISSUED ON STATUS CONFERENCE
ENTERED 12-19-19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Pro Se

Jason Paul Hughes

Pro Se

Betty McCarthy

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

CONT... Deborah Jean Hughes

Anerio V Altman

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, February 27, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

#10.00 STATUS CONFERENCE RE: Complaint Of Creditor For Denial Of Discharge (11 U.S.C. Section 727) And To Determine Nondischargeability Of Debt (11 U.S.C. Section 523(a))

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE SET FOR 3/26/20
PER ANOTHER SUMMONS ISSUED ON 1/6/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Plaintiff(s):

Adam Seligman

Represented By
Amy Johnsgard

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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Thursday, February 27, 2020

Hearing Room 5B

10:00 AM

8:19-13493 Ralph Maxwell Burnett, III

Chapter 11

Adv#: 8:19-01230 Ross v. Burnett, III et al

#11.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(2) and 523(a)(6) of the Bankruptcy Code

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-26-20 AT 10:00 AM.
PER ANOTHER SUMMONS ISSUED AND NOTICE OF STATUS
CONFERENCE ENTERED 1-10-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Ralph Maxwell Burnett III

Pro Se

Shelley Lynn Burnett

Pro Se

Joint Debtor(s):

Shelley Lynn Burnett

Represented By
Michael Jones
Sara Tidd

Plaintiff(s):

Richard Ross

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, February 27, 2020

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 7

Adv#: 8:19-01225 Casey v. Grant et al

#12.00 STATUS CONFERENCE RE: Complaint For: 1) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 548(a)(1)(A); 2) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 548(a)(1)(B); 3) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 544(b) and Cal Civ Code Section 3439.04(a)(1); 4) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 544 and Cal Civ Code Section 3439.04(a)(2); 5) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 544 and Cal Civ Code Section 3439.05; and 6) Recovery of Fraudulent Transfer Pursuant to 11 USC Section 550 and Cal Civ Code Section 3439.07

Docket 1

***** VACATED *** REASON: OFF CALENDAR PER ANOTHER
SUMMONS ISSUED ON 12/23/19, STATUS CONFERENCE SET FOR
3/12/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

Defendant(s):

Robert B. Grant

Pro Se

Betty L. Lockhart-Grant

Pro Se

Plaintiff(s):

Thomas H. Casey

Represented By
Beth Gaschen

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen

**United States Bankruptcy Court
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CONT... Catherine M Haretakis

Chapter 7

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Central District of California
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10:00 AM

8:19-14912 Igor Shabanets

Chapter 11

Adv#: 8:20-01002 Remares Global, LLC v. Olga Shabanets, as trustee of the 2012 Irrevocable

#13.00 STATUS CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court

Docket 1

Tentative Ruling:

Tentative for 2/27/20:

Deadline for completing discovery: August 1, 2020

Last date for filing pre-trial motions: August 24, 2020

Pre-trial conference on: September 10, 2020 at 10:00AM

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Olga Shabanets, as trustee of the

Pro Se

Olga Shabanets

Pro Se

Igor Shabanets

Pro Se

Merrill Lynch, Pierce, Fenner &

Pro Se

Plaintiff(s):

Remares Global, LLC

Represented By
Bob Benjy

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, February 27, 2020

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

#14.00 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 9-5-19 per order approving stip. ent 8-22-19)

Docket 12

Tentative Ruling:

Tentative for 2/27/20:

Where is the joint pre-trial stipulation? What is status? Should case be dismissed for failure to prosecute?

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.

Party Information

Debtor(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

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

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Hearing Room 5B

10:00 AM

CONT... Hutton Douglas Michael Brown

Christine A Kingston

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

Adv#: 8:19-01042 Laski v. Almada et al

#15.00 Application And Order For Appearance And Examination Of Anthony Almada,
Debtor Re: Enforcement Of Judgment

Docket 44

***** VACATED *** REASON: OFF CALENDAR - RE-SCHEDULED TO
4-14-20 AT 10:00 A.M. PER ORDER FOR APPEARANCE AND
EXAMINATION OF ANTHONY ALMADA TO ENFORCE JUDGMENT
OF DEBTOR ENTERED 2-11-20**

Tentative Ruling:

- NONE LISTED -

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
M Douglas Flahaut

Trustee(s):

Richard J Laski (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian
Christopher K.S. Wong

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10:00 AM

CONT... Vitargo Global Sciences, Inc.

Leonard M Shulman
Ryan D O'Dea

Chapter 11

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, February 27, 2020

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 12-12-19)

Docket 407

Tentative Ruling:

Tentative for 2/27/20:
Status?

Tentative for 12/12/19:
The court would appreciate a report as to what occurred pursuant to previous
TPO.

Tentative for 11/21/19:
Same. What happened on the storage unit?

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

**United States Bankruptcy Court
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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

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11:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

- #17.00** 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 at s/c held 8-15-19)
(cont'd from 2-6-20 per order granting ex parte application to continue defendants' mtn to dsm and the pre-trial conference entered 2-05-20)

Docket 1

Tentative Ruling:

Tentative for 2/27/20:

This is supposed to be a pre-trial conference. Sadly, it is not that and this is hardly the first time in this series of cases where the court has been sorely frustrated.

As required by the LBRs, the parties were to have met and conferred in good faith to narrow the issues so that trial time could be focused on those items truly in dispute. Local Rule 7016-1 sets forth a very specific timeline and list of duties incumbent on each side. At LBR 7016-1(b)(1)(C) Plaintiff was to have initiated a meet and confer *at least 28 days* before the date set for the pre-trial conference. According to Defendant's papers, this did not occur 28 days before the originally scheduled pretrial conference of Feb. 6, *or indeed at all* until February 13 when Plaintiff reportedly filed his "Pretrial Stipulation" in which he claims it was Defendants who "refused to participate in the pretrial stipulation process" necessitating what is actually a unilateral stipulation. Defendant on the next day, February 14, filed his Unilateral Pretrial Stipulation. Defendant does acknowledge at his page 2, line 1-2 that Plaintiff sent something over to Defendant on January 28, but it was reportedly "not complete in any respect." As to the original date of the Pretrial Conference of February 6, that was *very late*. Whether that document was

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CONT... Tara Jakubaitis

Chapter 7

anything close to what was later filed unilaterally on Feb. 13 is not clarified. But what is very clear is that these two unilateral "stipulations" are largely worthless in the main goal of narrowing issues inasmuch as the parties seem to be discussing two entirely different complaints. Defendant focuses on what the former trustee (now deceased) may have known about the existence of a loan undisclosed on the schedules made by Frank to WeCosign, Inc., which loan was reportedly worthless in any case, and about how that knowledge should be imputed to Plaintiff Marshack. But why the trustee's knowledge, imputed or otherwise, should justify an alleged misstatement or omission to list assets under oath, is never quite explained. One presumes Defendant will argue materiality. Plaintiff focuses on the alleged use of another corporation, Tara Pacific, as the repository of funds taken from WeCosign as an alleged fraudulent conveyance and then used by Frank and Tara as a piggy bank between 2010 and 2012 and upon alleged misstatements in the schedules about Tara's and Frank's actual average income. While this sounds like a fraudulent conveyance theory the gist seems to be that Tara and Frank were using ill-gotten gains to live on while denying in respective schedules that they had any income (or assets) thus comprising a false oath. There probably are connections between these different stories, but that is not made at all clear (and it must be made clear). Plaintiff's overlong "stipulation" is written more like a 'cut and paste' brief containing long tables with over 59 footnotes inserted. One presumes this represents a good faith compilation of bank records, but even that is left unclear. But the language used reads purely as advocacy, not an attempt to narrow the disputed facts in a way the other side can sign.

Buried in the Defendant's recitations (at page 4, ¶ 13) is the argument that the case should be dismissed as outside the statute of limitation (or statute of repose in Defendant's terms) described at §727(e)(1). Why this was not raised 50+ months ago when the action was filed by Rule 12(b) motion or otherwise is not explained. What the Defendant expects the court to do with this point now is also not explained.

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CONT...

Tara Jakubaitis

Chapter 7

In sum, this case is still a disorganized mess. This is not the first time the court has voiced its utter frustration with this series of cases. Rather than being ready for trial, we are very much still at the drawing board. The court is not happy about it as this is hardly a young case.

What is the remedy? The court could order sanctions against either side, or maybe both sides, and that would be richly deserved. The court could decide that Plaintiff as the party with the initial duty under the LBRs should suffer the brunt of just consequences by a dismissal, as the ultimate sanction. But however tedious and frustrating this has become the court would rather see these cases decided on their merits (if any) *if that is possible*. But what the court will not do is to further indulge these parties in disobeying the LBRs and generally continuing to shamle along, never getting anywhere.

Therefore, **it is ordered**:

1. The parties will immediately meet and confer about reducing the two unilateral 'stipulations' into an intelligible, single, useful list of items not in dispute and therefore requiring no further litigation;
2. The resulting stipulation will be concise, user-friendly and focused on the actual legal issues to be tried;
3. The stipulation will contain a concise list of exhibits to be offered at trial identified by number for Plaintiff and letter for Defendant;
4. The parties will attempt in good faith to resolve any evidentiary objections to admission of the exhibits, and if agreement cannot be reached, state concisely the reasons for or against admissibility;
5. The stipulation will contain a list of witnesses to be called by each side, with a very brief synopsis of the expected testimony;
6. All factual matters relevant and truly in dispute will be listed, by

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Tara Jakubaitis

Chapter 7

short paragraph;

7. All legal issues to be decided will be separately listed, by paragraph;
8. Any threshold issues such as Defendants argument about statute of repose will be separately listed along with a suggested means of resolving the issue; and
9. Both sides will estimate expected length of trial, mindful that the court requires all direct testimony by declaration with the witnesses available at trial for live cross and re-direct.

In sum the parties are to do their jobs. If the court's order is not followed *in enthusiastic good faith, and completely* with the goal of narrowing the issues, and if the resulting product is not a concise, user-friendly joint pretrial stipulation, the offending party or parties will be subject to severe sanctions which may include monetary awards and/or the striking or either the complaint or answer.

Continue about 60 days to accomplish the above.

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.

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CONT... Tara Jakubaitis

Chapter 7

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
discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can
be set.

Tentative for 5/4/17:
Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines
make sense at this juncture given the ongoing disputes over even
commencing discovery?

Tentative for 3/23/17:
See #13.1

Tentative for 12/8/16:

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CONT... Tara Jakubaitis
No status report?

Chapter 7

Tentative for 3/10/16:
See #6 and 7.

Tentative for 1/14/16:
Status conference continued to March 10, 2016 at 11:00 a.m. to coincide with
motion to dismiss.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

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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11:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

**#18.00 Motion to Dismiss Adversary Proceeding As To Frank Jakubaitis
(cont'd from 2-06-20 per order granting ex parte application to cont
defendants' motion to dismiss pursuant to FRCP 12(b)(6) entered 2-05-20)**

Docket 183

Tentative Ruling:

Tentative for 2/27/20:

This is the motion of Frank and Tara Jakubaitis ("Frank", "Tara" or collectively "Defendants") to dismiss Frank from this adversary proceeding for lack of subject matter jurisdiction pursuant to Fed R. Civ. P. 12(b)(1). Defendants assert that because this adversary proceeding, which seeks revocation of discharge under 11 U.S.C. §727 and turnover of assets under 11 U.S.C. §542, is in Tara's bankruptcy case, Frank is a non-debtor, which, in turn, means that the Chapter 7 Trustee, Richard Marshack ("Trustee" or "Marshack") lacks standing to bring this adversary proceeding as to Frank. Therefore, Defendants argue Frank should be dismissed as a defendant in this adversary proceeding.

"The objection that a federal court lacks subject-matter jurisdiction... may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006). "Article III of the Constitution limits federal-court jurisdiction to 'cases' and 'controversies.' U.S. Const., Art. III, §2. We have interpreted this requirement to demand that 'an actual controversy . . . be extant at all stages of review, not merely at the time the complaint is filed.'" *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 669 (2016). "[F]ederal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *De Funis v. Odegaard*, 416 U.S. 312, 316 (1974). "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560

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CONT... Tara Jakubaitis
(1992).

Chapter 7

1. Revocation of Discharge Under §727

Defendants have always maintained that Trustee lacked standing to seek revocation of discharge against Frank because Frank is not the debtor in this case nor has Mr. Marshack been appointed trustee over Frank's separate bankruptcy case. This court has already ruled on this issue, albeit with the names reversed. In its August 15, 2019 tentative ruling on "Defendant's Motion For Reconsideration Of Order Striking Defendants Answers Entered On June 6, 2019," this court noted, "Defendants also correctly point out that revoking [Tara's] discharge makes no sense if brought in Frank's case." As persuasively argued by Defendants, the same logic should apply if the court simply reversed the names. In any case, Frank's discharge was revoked by order of this court on September 24, 2019 in the adversary proceeding in his own bankruptcy case (see 8:15-ap-01020, Dkt. #452), which moots the revocation of discharge issue as it concerns Frank in this adversary proceeding.

Trustee confusingly argues that a motion brought under FRCP 12(b)(6) would be untimely. While that may be true, as is clearly stated in the motion, this motion challenges the Plaintiff's standing and this court's *subject matter jurisdiction* under FRCP 12(b)(1). As it is appropriate to challenge subject matter jurisdiction at any time, it is incorrect to argue that this motion is untimely.

2. Turnover Under §542

On the issue of turnover, Defendants again assert that Trustee lacks standing to pursue this claim because Frank filed his petition before Tara filed her petition. Defendants argue, all of Frank's separate property and their community property became part of *Frank's* bankruptcy estate, which is under

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CONT... Tara Jakubaitis

Chapter 7

control of trustee, Jeffrey Golden ("Golden"), not Marshack. Defendants note that Golden filed an adversary proceeding against Defendants nine months before Marshack brought this adversary proceeding against Defendants and that the claims in the Golden adversary proceeding mirror those brought in the current adversary proceeding. Defendants also point out that Tara was dismissed (properly) from Frank's adversary proceeding. Defendants argue that Golden brought a default judgment proceeding against Frank seeking a monetary judgment for Frank's alleged failure to turnover assets of the estate, but the court denied the request for monetary judgment. Further, Defendants point out that on March 31, 2018, Mr. Golden filed his second no-asset report. In fact, Defendants argue that both trustees have filed no-asset reports and have not withdrawn them, which makes it clear, in Defendants' view, that there is simply nothing to turnover. Thus, Defendants argue, the court lacks jurisdiction over a claim for which no effective relief can be granted. *In re Parks*, 475 B.R. 703, 706 (9th Cir. BAP 2012).

In contrast, Marshack argues that enough evidence has already been produced that show that Frank and Tara have worked in tandem to hide assets, including some assets that were not disclosed in Frank's schedules. Specifically, Trustee argues that a loan made by Frank to WeCosign, Inc. in the amount of \$250,000, which was then forgiven by Frank and Tara, was not properly scheduled. In essence, Trustee argues that this motion is just another attempt by Defendants to use the bankruptcy system to hide assets by the filing of multiple concurrent bankruptcy proceedings. However, perhaps notably, Trustee does not acknowledge or even address the no-asset reports issued by both trustees. Thus, this leaves significant uncertainty about what should be done with the turnover claim. Further, like the similar issue in Frank's case, the court is not clear that §542 "turnover" is an appropriate theory in any case. Apparently, the subject asset, an alleged \$250,000 promissory note from WeCosign, Inc., was "forgiven" on the eve of the respective bankruptcies. But that is an intangible asset, nothing concrete that fits within the concept of "turnover." Damages might be appropriate under a

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CONT... Tara Jakubaitis

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fraudulent conveyance or conversion theory; turnover, not so much for turnover. But Trustee may be correct that as to this theory such a motion should have been brought as a Rule 56 motion, not Rule 12(b),

3. Conclusion

This case(s) remain something of a factual and procedural labyrinth, which makes nailing down details extremely difficult. However, it seems clear that it is appropriate for Frank to be dismissed from this adversary proceeding, at least as to the revocation of discharge claim. Both parties seem to agree on this point. What is left somewhat unclear is what should be done with the turnover claims. As far as the court is aware, there has been no joinder of Frank and Tara's adversary proceedings. If, as seems to be the case, Trustee is arguing that there is clear evidence that Frank and Tara have jointly concocted a scheme to hide assets through multiple, and more or less concurrent, bankruptcy filings, the court should order further briefing solely on this issue to get a clearer picture of where things stand and whether joinder is proper so that this issue can be adjudicated all in one consolidated proceeding. Amendment of the pleadings may be necessary to the extent that it is agreed that "turnover" is an inapplicable remedy for the harm alleged here. To the extent that "turnover" is an inappropriate remedy, pressing of that point should be raised under Rule 56 or perhaps a Rule 12 (c) motion for judgment on the pleadings.

Grant the motion dismissing the revocation of discharge claim against Frank in this adversary proceeding. Order further briefing on the turnover issue and set deadlines for amendment and/or other dispositive motion.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker

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

Thursday, February 27, 2020

Hearing Room 5B

11:00 AM

CONT... Tara Jakubaitis

Chapter 7

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**

Thursday, February 27, 2020

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

**#19.00 Motion to Withdraw As Counsel Of Record For Defendant Guy Griffithe
(OST Signed 2-18-20)**

Docket 28

Tentative Ruling:

Tentative for 2/27/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

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, February 27, 2020

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

**#20.00 Motion To Withdraw As Counsel Of Record For Defendant Guy Griffithe
(OST Signed 2-18-20)**

Docket 29

Tentative Ruling:

Tentative for 2/27/20:
See #19

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe Et.Al

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph 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, February 27, 2020

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01200 Samec et al v. Griffithe

**#21.00 Motion To Withdraw As Counsel Of Record For Defendant Guy Griffithe
(OST Signed 2-18-20)**

Docket 25

Tentative Ruling:

Tentative for 2/27/20:
See #19

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

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, February 27, 2020

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01201 Bagot v. Griffithe

**#22.00 Motion To Withdraw As Counsel Of Record For Defendant Guy Griffithe
(OST Signed 2-18-20)**

Docket 30

Tentative Ruling:

Tentative for 2/27/20:
See #19

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Steven Bagot

Represented By
Heidi Urness
Richard H Golubow
Peter W Lianides

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, February 27, 2020

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01202 Wick v. Guy Griffithe

**#23.00 Motion To Withdraw As Counsel Of Record For Defendant Guy Griffithe
(OST Signed 2-18-20)**

Docket 14

Tentative Ruling:

Tentative for 2/27/20:
See #19

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Gregory Wick

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, March 3, 2020

Hearing Room 5B

10:30 AM

8:19-13020 Patricia Bullock

Chapter 13

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 2-04-20)**

CARVANA LLC
Vs.
DEBTOR

Docket 79

Tentative Ruling:

Tentative for 3/3/20:
Same.

Tentative for 2/4/20:
Grant unless post-petition current or APO.

Party Information

Debtor(s):

Patricia Bullock

Represented By
William J Smyth

Movant(s):

Carvana, LLC

Represented By
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, March 3, 2020

Hearing Room 5B

10:30 AM

8:19-13931 Cesar Larios and Trudy Rosa Larios

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CREDIT UNION OF SOUTHERN CALIFORNIA
Vs.
DEBTOR

Docket 32

Tentative Ruling:

Tentative for 3/3/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Cesar Larios

Represented By
Marc A Goldbach

Joint Debtor(s):

Trudy Rosa Larios

Represented By
Marc A Goldbach

Movant(s):

Credit Union of Southern California

Represented By
Karel G Rocha

Trustee(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 3, 2020

Hearing Room 5B

10:30 AM

8:19-14421 Robert Shane Seigel

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BRIDGEST CREDIT COMPANY
Vs.
DEBTOR

Docket 20

Tentative Ruling:

Tentative for 3/3/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Robert Shane Seigel

Represented By
Timothy McFarlin

Movant(s):

Bridgest Credit Company

Represented By
Kristin A Zilberstein

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 3, 2020

Hearing Room 5B

10:30 AM

8:19-14495 Lauren Taylor Galindo

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICA FIRST CREDIT UNION
Vs.
DEBTOR

Docket 16

Tentative Ruling:

Tentative for 3/3/20:
Continue for notice to Debtor. Movant should provide court with a complete Judge's copy of the motion and notice.

Party Information

Debtor(s):

Lauren Taylor Galindo

Represented By
Elham Azimy

Movant(s):

America First Credit Union

Represented By
Jeffrey D Cawdrey

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 3, 2020

Hearing Room 5B

10:30 AM

8:19-14912 Igor Shabanets

Chapter 11

**#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY
[RE: 2017 Mercedes-Benz GLE43C4]**

Docket 58

***** VACATED *** REASON: RE-SCHEDULED TO 3-24-20 AT 10:30
A.M. - SEE DOCUMENT #84**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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, March 3, 2020

Hearing Room 5B

10:30 AM

8:19-14912 Igor Shabanets

Chapter 11

**#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY
[Re: 2017 Mercedes Benz E300W]**

DAIMLER TRUST
Vs.
DEBTOR

Docket 59

***** VACATED *** REASON: RE-SCHEDULED TO 3-24-20 AT 10:30
A.M. SEE DOCUMENT #85**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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, March 3, 2020

Hearing Room 5B

10:30 AM

8:19-14912 Igor Shabanets

Chapter 11

**#7.00 Motion for relief from the automatic stay PERSONAL PROPERTY
[Re: 2017 Mercedes-Benz S65A]**

DAIMLER TRUST
Vs.
DEBTOR

Docket 60

***** VACATED *** REASON: RE-SCHEDULED TO 3-24-20 AT 10:30
A.M - SEE DOCUMENT #86**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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, March 3, 2020

Hearing Room 5B

10:30 AM

8:20-10079 James G Andritch, II

Chapter 7

#8.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FIRST INVESTORS SERVICING CORPORATION
Vs.
DEBTOR

Docket 17

Tentative Ruling:

Tentative for 3/3/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

James G Andritch II

Represented By
Bruce A Boice

Movant(s):

First Investors Servicing Corporation

Represented By
Sheryl K Ith

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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

Tuesday, March 3, 2020

Hearing Room 5B

10:30 AM

8:19-13594 Dania Lopez

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY

MIDFIRST BANK
Vs.
DEBTOR

Docket 32

Tentative Ruling:

Tentative for 3/3/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Dania Lopez

Represented By
Rebecca Tomilowitz

Movant(s):

MidFirst Bank, its assignees and/or

Represented By
Nancy L Lee
Kristin A Schuler-Hintz

Trustee(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 3, 2020

Hearing Room 5B

10:30 AM

8:20-10464 Rosa Elena Melgar Dominguez

Chapter 13

#10.00 Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay as the Court Deems Appropriate

Docket 6

Tentative Ruling:

Tentative for 3/3/20:
Grant.

Party Information

Debtor(s):

Rosa Elena Melgar Dominguez

Represented By
Richard L. Sturdevant

Movant(s):

Rosa Elena Melgar Dominguez

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**

Tuesday, March 3, 2020

Hearing Room 5B

11:00 AM

8:11-22626 Son Ba Mai

Chapter 7

Adv#: 8:19-01019 Daniel Cham MD v. Mai

#11.00 Motion and Brief In Support Of Motion Of Erwin E Adler To Withdraw As Daniel Cham's Counsel

Docket 43

Tentative Ruling:

Tentative for 3/3/20:
Grant.

Party Information

Debtor(s):

Son Ba Mai

Represented By
Christina M Chan
Christopher L Blank

Defendant(s):

Son Mai

Represented By
Christopher L Blank
Erwin Adler

Plaintiff(s):

Daniel Cham MD

Represented By
Erwin E Adler
Christopher L Blank

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 3, 2020

Hearing Room 5B

11:00 AM

8:11-22626 Son Ba Mai

Chapter 7

Adv#: 8:19-01019 Daniel Cham MD v. Mai

#11.10 Motion And Brief In Support Of Motion To Enlarge Time For Daniel Cham To Respond To Mai's Discovery
(OST Signed 2-27-20)

Docket 46

Tentative Ruling:

Tentative for 3/3/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

Son Ba Mai

Represented By
Christina M Chan
Christopher L Blank

Defendant(s):

Son Mai

Represented By
Christopher L Blank
Erwin Adler

Plaintiff(s):

Daniel Cham MD

Represented By
Erwin E Adler
Christopher L Blank

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 3, 2020

Hearing Room 5B

11:00 AM

8:19-12162 John Louis Katangian and Shelline Marie Katangian

Chapter 7

#12.00 STATUS CONFERENCE RE: Status Report Of Chapter 7 Trustee Thomas H. Casey's

Docket 89

Tentative Ruling:

Tentative for 3/3/20:
No tentative.

Party Information

Debtor(s):

John Louis Katangian

Represented By
Michael R Totaro

Joint Debtor(s):

Shelline Marie Katangian

Represented By
Michael R Totaro

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, March 3, 2020

Hearing Room 5B

11:00 AM

8:19-12978 David Yanez

Chapter 7

#13.00 Chapter 7 Trustee's Motion For Order Compelling Debtor To Turn Over Property Of The Estate And To Vacate Property Of The Estate And To Vacate Property Of The Estate And Remove All Personal Property Pursuant to 11 U.S.C. § 542(a)

Docket 29

Tentative Ruling:

Tentative for 3/3/20:

The question presented is straightforward and not even a close call. The parties expend several pages and copious volumes of ink over competing calculations of what equity might be realized from the trustee's sale of the property. All of that is beside the point. Section 542 is not conditioned. It is absolute. The debtor "shall deliver" to the trustee. It is not the debtor's place to quibble over fair market value or the relative utility of staying in residence. Those are the trustee's calls alone to make. She decides the relative benefits and burdens, and if she determines debtor's continued residence is a detriment, that ends the inquiry, irrespective of rental value or price.

Grant. Trustee may phrase the order as a directive to the U.S. Marshal to enforce after 10 days of entry of the order.

Party Information

Debtor(s):

David Yanez

Represented By
Summer M Shaw

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Ryan W Beall

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

Tuesday, March 3, 2020

Hearing Room 5B

11:00 AM

8:19-14245 Tae H Ko

Chapter 7

#14.00 Debtor's Motion For Contempt For Violation Of The Automatic Stay

Docket 37

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO APPEAR AT
341(a) MEETING OF CREDITORS ENTERED 2-05-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tae H Ko

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Tuesday, March 3, 2020

Hearing Room 5B

11:00 AM

8:19-12977 Dianne Dobson-Sojka

Chapter 7

#15.00 Motion To Reopen Chapter 7 Case Due To Violation Of Stay And Request For Fee Waiver.

Docket 29

Tentative Ruling:

Tentative for 3/3/20:

This is Debtor, Dianne Dobson-Sojka's ("Debtor's") new motion to reopen her chapter 7 case to remedy what she perceives as unlawful auctions of her cherished personal property formerly contained in a storage unit owned by Defendant, Santa Paula Storage Place ("Santa Paula").

On January 14, 2020, this Court denied the Debtor's First Motion to reopen this Case for several reasons including the Debtor's failure to provide evidentiary support for her claims and the Debtor's failure to address how Storage Place's statutory warehouseman's lien affects Debtor's purported claims against Storage Place.

On January 28, 2020, this Court entered an Order Setting Hearing ("Scheduling Order") on Debtor's New Motion. In its Scheduling Order, the Court specifically stated that "Debtor should address the issue of a warehouseman's lien prior to the hearing." (Docket No. 34) Instead of doing as the Court required, on February 18, 2020, Debtor filed a document entitled "Debtors [sic] Further Brief Exhibits" ("Debtor's Brief") which brief contains irrelevant information and assertions that lack any evidentiary support whatsoever with respect to claims Debtor is asserting against Storage Place and others. (Docket No. 37)

Unfortunately, as Santa Paula argues, Debtor's motion does not really get her anywhere. The main issue identified by the court, the warehouse lien, is not addressed at all and the evidence provided is not responsive to any of the court's concerns.

Deny without prejudice.

Party Information

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

Tuesday, March 3, 2020

Hearing Room 5B

11:00 AM

CONT... Dianne Dobson-Sojka

Chapter 7

Debtor(s):

Dianne Dobson-Sojka

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, March 4, 2020

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

**#1.00 Post Confirmation Status Conference
(con't from 11-13-19)**

Docket 1

Tentative Ruling:

Tentative for 3/4/20:
Continue for further status conference in about 120 days.

Tentative for 11/13/19:
Continue status conference approximately 120 days.

Tentative for 7/17/19:
See #2

Tentative for 6/17/19:
Status?

Tentative for 5/30/19:
Status?

Tentative for 5/8/19:
See #5.

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

Wednesday, March 4, 2020

Hearing Room 5B

10:00 AM

CONT... Gregory Anton Wahl

Chapter 11

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?

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

Party Information

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, March 4, 2020

Hearing Room 5B

10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 11

#2.00 Motion For Order: (1) Authorizing Sale Of Debtors Leased Property Free And Clear Of All Liens; (2) Authorizing Assignment Of The Estates Interest In An Unexpired Lease Pursuant To 11 U.S.C. §365(f); (3) Authorizing And Approving Sale Overbid Procedures Pursuant To 11 U.S.C. § 363(b); (4) Approving The Sale Free And Clear Of Liens And Other Interests Pursuant To 11 U.S.C. § 363(f); (5) Finding Buyer Is A Good Faith Purchaser; And (6) Waiving The 14-Day Stays Of FRBP 6004(h) and 6006(d)
(cont'd from 1-22-20)

Docket 150

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
MOTION ENTERED ON 2/21/2020**

Tentative Ruling:

Tentative for 1/22/20:

This is the motion of debtor under §363(f) to sell substantially all assets of the estate free of liens to Grand Theater, Inc., an entity owned and controlled by Musa Madain, the principal of the debtor. The assets to be sold consist primarily of the leasehold (about 25 years left), with personal property therein, commonly known as 2232 S. Harbor Blvd., Anaheim, CA. The property is operated as an events center. The proposed price is \$1 million cash plus assumption by the buyer or waiver of six enumerated creditors of an aggregate of about another \$1 million, but of which \$631,590 is held by Mr. Madain. Debtor admits that valuation of the noncash portion of the bid will take further analysis, but in other places Debtor alleges the total value is \$2 million. From the cash portion of the price about \$420,000 is proposed to be paid to secured claims, although the accurate amount of aggregate secured claims may be much higher as, for example, the County of Orange's claim alone is \$395,040. The price is made subject to overbids in the proposed initial minimum amount of \$100,000 (initial bid \$1,100,000) to be followed by subsequent overbids of at least \$10,000, but to qualify as an overbidder \$200,000 must first be paid care of Debtor's counsel.

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

Wednesday, March 4, 2020

Hearing Room

5B

10:00 AM

CONT...

M3Live Bar & Grill, Inc.

Chapter 11

The proposed sale is opposed by Fariborz Wosoughkia, a creditor for about \$95,000 and a 30% shareholder and by the California Department of Tax and Fee Administration owed around \$418,130. The arguments are primarily to the effect that the sale to an insider merits closer scrutiny and that the price is too low, or at least the marketing efforts over the holidays were inadequate. Mr. Wosoughkia adds to the effect that Mr. Madain is a fraud, and this is just another in a long parade of such frauds.

The U.S. Trustee has not formally opposed the sale but has his own motion to dismiss or convert already on calendar as #4 which has been continued twice since October 30, 2019. That motion is based primarily on a continuing list of monthly operating losses as reported in the MORs.

Debtor is correct that a sale to an insider is not *per se* improper. See *Mission Prod. Holdings v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (1st Cir. BAP 2016). But it is also true that sales to insiders are always subject to a heightened level of scrutiny since the opportunity for malfeasance is higher. See e.g. *In re Roussos*, 541 B.R. 721 ,730 (Bankr. C.D. Cal. 2015). In this respect the court's primary disappointment is in the level of marketing. The Debtor argues that it corresponded with all "persons known to have a potential interest in Debtor and Debtor's property." Goe Declaration ¶¶. But "known to whom"? While somewhat unclear, this group of self-selected recipients seems primarily to be the existing shareholders. Other potential buyers, Gotham Assets and a Delaware bankruptcy attorney for one Daniel Dokhanian, are also mentioned. Perhaps not surprisingly, nothing came of these inquiries as most seemed only interested in acquiring the fee interest, not a lease. But conspicuously lacking is any systematic sales effort. No mention is made either of advertisement or of any broker being hired. So, we really don't know whether an earnest marketing effort was made. As the *Roussos* court observes, this is fatal where the winning buyer ends up being the principal of the debtor because the insider frequently has counter incentives to those of the creditor body, i.e. a lower price, not a higher one, and less marketing not more. *Id.* at 730. On this record the court cannot

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

Wednesday, March 4, 2020

Hearing Room 5B

10:00 AM

CONT... M3Live Bar & Grill, Inc. Chapter 11

make a finding that optimal value was obtained, and it is little comfort to know that this sale is made subject to overbids when one has no means for knowing how wide an audience was sought.

Debtor argues that loss of a sale for \$1 million would be a tragedy, and that might be so. But the court may have a remedy at hand. The United States Trustee's motion to convert is also on calendar. If granted this would have the effect of placing a fiduciary in charge immediately. That fiduciary can quickly evaluate whether a more vigorous sales effort is warranted, and/or whether the existing offer from Mr. Madain deserves a further look. If an operating order to preserve value is needed while such a systematic sales effort is made, it should be available for the asking.

Continue motion for evaluation by appointed Chapter 7 trustee.

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

8:19-11458 2045 E Highland, LLC Chapter 11

#3.00 Debtor's Motion To: (1) Approve Sale of Real Property Located at 32201 Camino Capistrano, San Juan Capistrano, CA 92675 Free and Clear of Liens, Claims and Interests, and (2) Approve Payment of Real Estate Broker's Commissions:

Docket 104

Tentative Ruling:

Tentative for 3/4/20:

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

Wednesday, March 4, 2020

Hearing Room

5B

10:00 AM

CONT...

2045 E Highland, LLC

Chapter 11

This is 2045 E. Highland, LLC's ("Debtor's") motion to approve sale of real property at 32201 Camino Capistrano, San Juan Capistrano, CA 92675 to Camino Good Year LLC ("Buyer") for \$2,640,000.00 cash free and clear of liens, claims, and interests or, alternatively, to a successful overbidder; and (2) authorizing escrow to pay commission to the real estate broker; and approve payment of real estate broker's commissions. The motion has drawn limited oppositions from creditors Northeast Bank ("Northeast") and Seacoast Commerce Bank ("Seacoast"), and a more robust opposition from Mission Village/ The Village, LLC ("Village"),.

The terms of the sale as summarized by Debtor are:

The purchase price for the Property is \$2,640,000.00, all cash. The property is being sold "as is" and "where is," with no warranty or recourse whatsoever. There are no contingencies. Debtor and Buyer, or any successful overbidder, shall be bound by the terms of the Lease Agreement which provides for a long-term lease of the Property to Debtor. Debtor shall have an initial 10-year lease with four (4) five-year options to renew at fixed rental increases.

Debtor intends to sell the Property to the Buyer free and clear of all liens and claims, with those liens removed from the Property and the allowed amounts of certain liens in favor of the County of Orange, Seacoast, and Henry Kumagai ("Kumagai") to be paid through escrow as follows:

1. Debtor proposes to pay through escrow, the allowable amount of the liens due to the County, which are estimated to be \$117,565.59;
2. Debtor proposes to pay, through escrow, Kumagai the amount of \$35,000.00;

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Wednesday, March 4, 2020

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CONT...

2045 E Highland, LLC

Chapter 11

3. Debtor proposed to pay, through escrow, Broker fees in the amount of 4% of the sales price, estimated to be \$105,600.00;
4. Debtor proposes to pay, through escrow, all customary costs of sale;
5. Debtor proposed to pay, through escrow, all net proceeds to Seacoast plus an additional \$35,000.00 directly from Debtor;
6. Debtor shall receive no proceeds from the sale.

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. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 841. The 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.

Northeast is a holder of claim against Debtor in the amount of \$93,118.43 (\$47,100 is secured, as detailed below) as of the petition date. Northeast holds security interests in, among other things, all of Debtor's inventory, chattel paper, accounts, equipment, and general intangibles. Northeast has not determined whether any of its collateral constitutes a fixture and has not yet valued the Debtor's equipment and general intangibles but notes that the Debtor scheduled that it had \$35,000 in cash, \$1,800 in accounts receivable, \$10,000 in other equipment, and \$300 in office equipment. Northeast's limited opposition does not oppose the sale in its

**United States Bankruptcy Court
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CONT... 2045 E Highland, LLC

Chapter 11

entirety, but rather only insofar as the Debtor seeks authority to sell any personal property that is subject to any interest Northeast has in any fixtures which may be presently attached to the real property. Northeast also opposes the motion to the extent that any of its cash collateral would be used, especially to pay another party, without court approval in accordance with § 362(c)(2). Northeast also requires adequate protection of its security interests in accordance with §362(e).

Seacoast also filed a limited opposition, which objects to the sale unless:

- 1) Seacoast is allowed to review the proposed final numbers of any sale or bid before consummating the sale;
- 2) Post-petition taxes to be paid by the buyer;
- 3) Seacoast participates in the bidding process by requiring their consent before a sale can commence;
- 4) Overbidder be allowed to submit a bid for only for a five-year lease.
- 5) Pending litigation between Debtor and the bank in Orange County Superior Court must be dismissed with prejudice.
- 6) There is no further deterioration of Bank's position (mainly through an increase in property taxes).

Village's opposition is more extensive. Citing §363(f) Village asserts that the DIP could sell the property free of liens only if any one of the following conditions are met:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

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Central District of California
Santa Ana
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Wednesday, March 4, 2020

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CONT...

2045 E Highland, LLC

Chapter 11

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Village notes that neither Seacoast nor Kumagai have consented to this sale and argues, citing *Pac. Capital Corp. N.A. v. East Airport Dev. LLC (In re E. Airport Dev., LLC)*, 443 B.R. 823, 831 (9th Cir. BAP 2011) that their consent should not be implied by a failure to object for purposes of §363(f)(2). Village argues that even if assent by silence was permissible in this situation, the motion would still be defective for insufficient notice to both Kumagai and County of Orange. Notice was served electronically on February 12, 2020, which is 21 days prior to the hearing on this motion, but both Kumagai and County of Orange only received notice through U.S. Mail. Village also argues that the motion should be denied because it discriminates unfairly against Class 3 Unsecured Creditors. The motion proposes to pay Kumagai \$35,000 in full satisfaction of his claim. However, Debtor's disclosure statement has not yet been approved (it was continued to May 6, 2020). Village argues that the Kumagai claim contains issues that need to be resolved through the disclosure statement, not by this motion. To do so, Village argues, would be putting the proverbial cart before the horse. Village also argues that the Kumagai claim should be treated as unsecured and in Class 3 because of this court's February 14 order determining the value of the property. Village is also dubious that as an unsecured creditor, Kumagai is entitled to receive the sum of \$35,000, which would be significantly more than other Class 3 members (\$55% vs. 22% for other class members) by paying him more than other unsecured creditors. Debtor does state that Kumagai will release his civil claims against Debtor, but Village argues that there is simply not enough information about the civil claims provided to determine whether such

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Santa Ana
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CONT... 2045 E Highland, LLC

Chapter 11

consideration is sufficient. Village suggests that what essentially amounts to a settlement with Kumagai should first be approved by this court.

Finally, Village argues that the motion should be denied because it includes a restriction (subject to long-term lease) that may limit the value of the property in exchange for no value to the creditors. Village suggests that if the court is inclined to agree that some kind of lease could be required by the motion, such a lease term should not exceed five years. However, the motion requires any bidders to offer a 10 years lease with permissible extension for 4-5 years, adding up to a total of 30 years of occupancy. Village takes issue with this provision because it is not accompanied by evidence that would suggest how such an arrangement would benefit creditors. Village argues that the lack of evidence is concerning because the proposed plan pays unsecured creditors at 22%, which equates to roughly \$3,000 per month, but Debtor's disclosure statement stated a monthly net income of between \$15,000 and \$18,000. Village suggests that Debtors could afford to pay \$10,000 per month for 60 months, which would result in a return of approximately 73%. If the payment schedule were increased to 10 years, Village argues, 100% of the claims would likely be paid, which is why the lease requirement is so important to consider.

There are several unanswered questions here which present obstacles to the sale as proposed. All of them must be answered before the court could grant this motion: They are:

1. If the value is \$2,640,000 subject to a long-term renewable lease, what is the value without this encumbrance? If the value were greater not subject to lease-back, are not creditors better served by a different, higher sale?
2. Under what theory does Kumagai get \$35,000 directly from escrow? According to these papers, he is effectively out of the money, yet he is favored with a richer dividend than is promised under the plan (or as may ever be achieved by the other unsecured creditors whether in a

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CONT...

2045 E Highland, LLC

Chapter 11

plan or otherwise) and, better yet, his recovery is assured whereas everyone in similar position has to hope a plan can be confirmed. If this is supposed to be in recognition of release of other claims, the motion must be in the form of a Rule 9019 compromise with notice and opportunity for hearing. It might be possible that this \$35,000 is to be as a carve-out from Seacoast's lien, but if so, that needs to be made far clearer;

3. There is considerable uncertainty whether Northeast's personal property collateral is to be sold, and if so, at what price. Some of this may be fixtures, some may be separate personal property, but if so, a delineation in the price on account needs to be clarified.
4. Unless Seacoast consents, the court does not see how the sale can be approved within the strictures of §363(f). But whether Seacoast consents is left unclear.

These issues may be worked out in a way satisfactory to the objecting parties and within the limits of §363(f), but we are not there yet.

Continue for further hearing.

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

8:20-10493 Terry Gonzalez

Chapter 13

**#3.10 Debtor's Motion to Vacate Dismissal
(OST signed 3-3-2020)**

Docket 24

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 4, 2020

Hearing Room 5B

10:00 AM

CONT... Terry Gonzalez

Chapter 13

Tentative Ruling:

Tentative for 3/4/20:
Per OST, opposition may be made orally at hearing.

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 4, 2020

Hearing Room 5B

11:00 AM

8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

**#4.00 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 11-12-19)**

Docket 118

Tentative Ruling:

Tentative for 3/4/20:
Continue to March 11, 2020 at 10:00AM.

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

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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

- #1.00** 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 11-07-19)

Docket 1

Courtroom Deputy:

Telephonic Appearance: Michael J. Lee

Tentative Ruling:

Tentative for 3/5/20:
What is status of answer/default?

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

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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10:00 AM

CONT... Zia Shlaimoun Chapter 7

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
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, March 5, 2020

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

**#2.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-05-19)**

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 [F.R.B.P.
7041(a)] FILED 3/2/2020**

Courtroom Deputy:

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

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

Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

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, March 5, 2020

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.

**#3.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-05-19)**

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 [F.R.B.P.
7041(a)] FILED 3/2/2020**

Courtroom Deputy:

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

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, March 5, 2020

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 12-12-19 per order continuing s/c entered 12-11-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 7, 2020 AT 11:00
A.M. PER ORDER CONTINUING STATUS CONFERENCE ENTERED
3/3/2020**

Courtroom Deputy:

- NONE LISTED -

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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5B

10:00 AM

CONT...

Hoag Urgent Care-Tustin, Inc.

Cathy Ta
Elizabeth A Green

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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

**#5.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-05-19)**

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 FILED
3/2/2020**

Courtroom Deputy:

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

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

Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

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, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:19-01141 Marshack v. Prichard

**#6.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-05-19)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION TO DISMISS COMPLAINT AND TO AVOID AND
RECOVER PREFERENTIAL TRANSFER(S) PURSUANT TO 11 U.S.C.
SECTION 658 AND 550 ENTERED 3/2/2020**

Courtroom Deputy:

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

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

Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

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, March 5, 2020

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.

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-05-19)**

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 2/28/2020**

Courtroom Deputy:

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

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, March 5, 2020

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.

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-12-19 per order continuing s/c entered 12-11-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 7, 2020 AT 11:00
A.M. PER ORDER CONTINUING STATUS CONFERENCE ENTERED
3/3/2020**

Courtroom Deputy:

- NONE LISTED -

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

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

Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Cathy Ta
Elizabeth A Green

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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.

**#9.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-05-19)**

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 FILED
3/2/2020**

Courtroom Deputy:

Tentative Ruling:

Tentative for 12/5/19:
Status conference continued to March 5, 2020 at 10:00AM. Appearance optional.

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

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

Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

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, March 5, 2020

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.

**#10.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-05-19)**

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 [F.R.B.P.
7041(a)] FILED 3/2/2020**

Courtroom Deputy:

Tentative Ruling:

Tentative for 12/5/19:
Status conference continued to March 5, 2020 @ 10:00AM.

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

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

Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

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, March 5, 2020

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.

**#11.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 12-12-19 per order continuing s/c entered 12-11-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 7, AT 11:00 A.M.
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 3/3/2020**

Courtroom Deputy:

- NONE LISTED -

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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10:00 AM

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

Elizabeth A Green

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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 12-05-19)**

Docket 1

Courtroom Deputy:

Tentative Ruling:

Tentative for 3/5/20:
Why no status report? Settlement?

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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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
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Thursday, March 5, 2020

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 12-05-19)**

Docket 1

Courtroom Deputy:

Tentative Ruling:

Tentative for 3/5/20:
Why no status report? Settlement?

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

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
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Thursday, March 5, 2020

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
(cont'd from 12-5-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE MARCH 5,
2020 STATUS HEARING TO A DATE AFTER NOVEMBER 16, 2020
ENTERED 2-21-20**

Courtroom Deputy:

- NONE LISTED -

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
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Thursday, March 5, 2020

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

**#15.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge of Debtor
Pursuant to 11 U.S.C. Section 727
(cont'd from 12-12-19)**

Docket 1

***** VACATED *** REASON: RE-SCHEDULED TO 3-05-20 AT 11:00
A.M. PER ORDER GRANTING USTR'S APPLICATION TO RE-
SCHEDULE STATUS CONFERENCE TO COINCIDE WITH THE
HEARING ON THE USTR'S MOTION FOR DEFAULT JUDGMENT RE:
COMPLAINT ENTERED 1-21-20**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 12/12/19:

Status conference continued to March 5, 2020 at 10:00AM. Court expects judgment motion in meantime.

Party Information

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
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01201 Bagot v. Griffithe

**#16.00 STATUS CONFERENCE RE: Complaint Of NonDischargeability And Exception
From Discharge Of Debts
(cont'd from 1-16-20)**

Docket 1

Courtroom Deputy:

Telephonic Appearance: Baruch Cohen; Peter Lianides; Heidi Urness

Tentative Ruling:

Tentative for 3/5/20:
See #17

Tentative for 1/16/20:
See #6. The status conference will travel together with any dismissal
motions. Appearance not required.

Tentative for 12/19/19:
Status conference continued to January 16, 2020 at 10:00 a.m. to coincide
with motion to dismiss.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 5, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

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, March 5, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01201 Bagot v. Griffithe

#17.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]
(cont'd from 1-16-20)

Docket 6

Courtroom Deputy:

Tentative Ruling:

Tentative for 3/5/20:

This is the continued hearing on the Defendant's Rule 12(b) Motion to Dismiss. This analysis is divided into two sections. The first section deals with the subject matter jurisdiction issue. The second deals with whether claims for relief have been plausibly stated, sufficient to survive the motion.

I. Subject Matter Jurisdiction

At the hearing on January 16, 2020, because there was only sparse authority on the subject, the court requested supplemental briefing regarding whether this court had subject matter jurisdiction over this adversary proceeding in view of the parties' various connections to the cannabis industry (in violation of the Controlled Substances Act of 1970 ("CSA")). In its tentative ruling, the court summarized and excerpted portions of relevant case law and provided its own initial ideas on this narrow issue. That tentative ruling is incorporated herein by reference. Both sides have filed supplemental briefs on the narrow issue identified by the court.

Unfortunately, the supplemental briefing has not provided a definitive answer. Instead, Defendant has, again, cited the case of *Northbay Wellness Group, Inc. v. Beyries*, 2011 WL 5975445 (Bankr.N.D.Cal. 2011), where the

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Guy S. Griffithe

Chapter 7

bankruptcy court dismissed the debtor's case based on the equitable doctrine of *in pari delicto*. However, as this court noted in its earlier tentative ruling, the Ninth Circuit expressly overruled the bankruptcy court's application of the unclean hands doctrine on grounds that the bankruptcy court failed to properly balance the parties' respective wrongdoings.

In the interim, the court's own research has located case law within the Ninth Circuit that may be useful. In *Mann v. Gullickson*, 2016 WL 6473215 (N.D. Cal. Nov. 2, 2016), the court had to decide whether a contract related to the medical marijuana industry in California was enforceable. The court undertook a comprehensive analysis of the enforceability of contracts containing illegal subject matter. The court noted the specific prohibitions placed on marijuana by the CSA, but also noted that enforcement of contracts containing illegal subject matter resists hard and fast rules. Indeed, the *Mann* court observed that "[s]ometimes the forfeiture resulting from unenforceability is disproportionately harsh considering the nature of the illegality." *Id.* at *6. The court, citing the Ninth Circuit Case of *Bassidji v. Goe*, 413 F.3d 928 (9th Cir. 2005), devised a test of sorts for determining when contracts regarding illegal subject matter may nevertheless be enforceable:

"The Ninth Circuit analyzed federal case law and California precedents... to investigate '[n]uanced approaches to the illegal contract defense, taking into account such considerations as the avoidance of windfalls or forfeitures, deterrence of illegal conduct, and relative moral culpability,' and those considerations 'remain viable in federal court and represent no departure from [federal precedent] . . . [so] long as the relief ordered does not mandate illegal conduct.' *Id.* at 937-38." *Mann*, 2016 WL 6473215 at *7.

The *Mann* court also noted that "[t]he federal government's concern over the CSA's medical marijuana prohibition has waned in recent years, and the underlying policy purporting to support this prohibition has been undermined." *Id.* at *9. Noting that several states have legalized marijuana in one form or

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CONT... **Guy S. Griffithe**

Chapter 7

another, the *Mann* court held:

Given the federal government's wavering policy on medical marijuana in states that regulate this substance, and California's expressed policy interest in allowing qualified patients to obtain medical marijuana, the purported illegality here is not one the Court finds to mandate non-enforcement of the parties' contract. *Id.*

Here, the plaintiff is alleging breach of contract (among other related causes of action) against Defendant in connection with a marijuana concern. The court has already opined on the gross unfairness that would result if Defendant were allowed to use the bankruptcy system as a shield from his alleged misdeeds. The court also notes that, in the event Plaintiff prevails against Defendant in this adversary proceeding, this court would not be forcing either party to engage in illegal conduct. This was a major point raised in *Mann*, i.e. the issuance of a remedy would not necessarily entail a resort to unlawful conduct. Not only does this approach properly involve the balancing of relative wrongdoings as required by the Circuit in *Northbay*, it also harmonizes with the various cases where federal courts refused to become involved at all such as *In re Arenas*, 514 B.R. 887 (Bankr. D. Colo. 2012), because to do so would necessarily require someone to accommodate ongoing breach of the CSA, such as by selling contraband as assets of the estate.

Defendant argues that accepting jurisdiction would require the court to intervene proactively and thus improperly in what otherwise would have been Defendant's *carte blanche* ride to discharge. Implicit in this is the argument that the court should leave the wrongdoers where it finds them and only unusual action by the court offensive to the CSA would interrupt Defendant's ride to discharge. But this argument is unpersuasive because it could as easily be looked at another way, i.e. the court would be issuing a change in the status quo by granting the discharge, which is not a right but a privilege, and this action is to determine whether, balancing acts on both sides, that can

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Chapter 7

or should be done consistent with justice. The court is thus persuaded that it *does* have subject matter jurisdiction, or at least that there is no compelling reason on these facts to decide otherwise.

II. Are Claims for Relief Adequately Stated?

Plaintiff's complaint alleges claims for relief under 11 U.S.C. §727(a) (2), (3), (4), (5), (6), (7) and (12), as well as under 11 U.S.C. §523(a)(2), (4), and (6) (10 causes of action in total). By this motion, Defendant seeks dismissal of all causes of action.

A. 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 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

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Guy S. Griffithe

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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.*

B. Alleged Factual Background

Defendant-Debtor Guy S. Griffithe is an individual who, at all times pertinent hereto, owed a fiduciary duty to Plaintiff Steven Bagot, among others, who "invested" in his companies. Defendant-Debtor allegedly made fraudulent verbal and written statements to solicit "investments" into SMRB, LLC, a Washington State licensed marijuana producer/processor business, and was a signatory to allegedly fraudulent documents underlying the non-bankruptcy litigation in Skagit County Superior Court Case No. 18-2-00544-29 and King County Superior Court Case No. 19-2-00772-9 SEA. Plaintiff provided no less than \$650,000.00 to the Defendant through his alter-ego entity (Renewable Technologies Solutions, Inc. ("RTSI")) for the benefit of SMRB, LLC. When Plaintiff sued to recover his "investment" and damages for Defendant-Debtor's alleged wrongful conduct, the Defendant-Debtor filed the relevant bankruptcy action as well as this motion to dismiss.

On January 9, 2019, Mr. Bagot filed a complaint with the King County Superior Court Case No. 19-2-00772-9 SEA alleging causes of action against Defendant-Debtor for fraud, negligent misrepresentation, civil conspiracy, breach of contract, unjust enrichment, conversion, promissory estoppel, breach of the fiduciary duties, breach of the duties of good faith and fair dealing, violations of Washington's LLC disclosure requirements and violations of securities laws. The trial is set for April 6, 2020. The complaint is accompanied by Ex. "A", a report by the Washington State Liquor and Cannabis Board ("WSLCB report"), which provides details of Defendant's alleged misconduct and is heavily referenced in both the complaint and the opposition to this motion. Below the court analyzes how each of the alleged

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claims for relief fit with this background.

B. §727(a)(2)(A)

This statute provides: "The court shall grant the debtor a discharge, unless— 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— property of the debtor, within one year before the date of the filing of the petition[.]" Plaintiff has sufficiently pled this cause of action in the complaint. Specifically, Plaintiff alleges, with the aid of Exhibit A, that Defendant intentionally transferred valuable property belonging to him which reduced the assets available to the creditors and which was made with fraudulent intent. Plaintiff alleges that Defendant has transferred (to his alter ego entities, Robert Russell, entities owned by Russell, and other entities not known to Plaintiff), removed, destroyed, mutilated, or concealed his property, including the funds provided to him by Mr. Bagot, the oil processing machine, \$1,000,000 million in product from Emerald City Cultivation, and other assets Defendant claims to have utilized (a portion of) these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge. Plaintiff also asserts that this conduct occurred within 1-year of the petition date (June 26, 2019) as Plaintiff initiated legal proceedings against Defendant in late spring of 2018.

C. §727(a)(3)

This statute provides: "The court shall grant the debtor a discharge, unless— the debtor has concealed, destroyed, mutilated, falsified, or failed to

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Chapter 7

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" It is apparent that Plaintiff has adequately made this allegation in the complaint. Specifically, Plaintiff alleges in several places in the complaint the absence of adequate record keeping by Defendant as noted throughout, specifically in regard to Plaintiff's initial investment of \$450,000. Plaintiff also alleges the absence of adequate records related to the purchase of the oil-processing machine and the products purchased from Emerald City Cultivation among other assets. Plaintiff also asserts that he has been attempting to obtain such documentation through discovery without success. Thus, it appears that Plaintiff has adequately alleged that Defendant failed to keep relevant records, and there does not appear to be justification for this failure, taking Plaintiff's allegations as true.

D. §727(a)(4)

This statute provides: "The court shall grant the debtor a discharge, unless— the debtor knowingly and fraudulently, in or in connection with the case—

- (A) made a false oath or account;
- (B) presented or used a false claim;
- (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
- (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

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CONT... **Guy S. Griffithe**
affairs[.]"

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This statute requires that Plaintiff allege: (1) [the debtor] made a statement under oath; (2) the statement was false; (3) [the debtor] knew the statement was false; (4) [the debtor] made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *Matter of Beaubouef*, 966 F.2d 174, 178 (5th Cir 1992). False oaths sufficient to justify the denial of discharge include: (1) a false statement or omission in the debtor's schedules or (2) a false statement by the debtor at the examination during the course of the proceedings. *Id.* at 178; *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir.1999). Plaintiff's complaint, including the exhibits, does allege that Defendant made several intentional false statements relating to the bankruptcy case. For example, Plaintiff alleges that Defendant has failed to report or disclose several assets, including the hundreds of thousands of dollars he took from Plaintiff and never provided to SMRB, LLC. Plaintiff argues, citing *In re Hoblitzell*, 223 B.R. 211, 215-16 (Bankr.E.D. Cal. 1998), for the proposition that a false statement or omission is material even if it does not cause direct financial prejudice to creditors. Therefore, although not presented as clearly as it could be, it appears that Plaintiff has sufficiently alleged that Defendant made false statements under oath by failing to disclose several assets known to Defendant in his bankruptcy schedules with an intent to deceive creditors and officers of the court. These specific allegations are likely enough to satisfy the heightened pleading requirements for purposes of Rule 9(b).

E. §727(a)(5)

This section provides: "The court shall grant the debtor a discharge, unless— the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities[.]" Here, Plaintiff's complaint, including the additional detail in the Exhibit, has sufficiently alleged the disappearance

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Chapter 7

of identifiable assets no longer available to creditors, including the funds provided to him by Plaintiff, the (funds available for) purchase and transfer of the oil processing machine, the \$1,000,000 million (per month) in product purchased from Emerald City Cultivation, and other assets Defendant claims to have utilized a portion of these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge.

Defendant does not attempt to explain the loss of these assets, but only points out that the WSLCB report makes no such findings as detailed above. The court notes that the report is lengthy, and the complaint does not make reference to any specific page or paragraph numbers where such information can be easily found. However, in sum, Plaintiff's complaint, which incorporates the WSLCB by reference, does appear to sufficiently allege a cause of action under §727(a)(5), but Plaintiff's complaint could benefit from specific pin cites.

F. §727(a)(6)

The statute provides: "The court shall grant the debtor a discharge, unless—the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

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Guy S. Griffithe

Chapter 7

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify[.]"

Plaintiff argues that it is undisputed that as stated in the Complaint, in the King County Superior Court litigation, the Honorable Judge McHale entered an Order ordering Defendant-Debtor provide complete responses and documents in response to Mr. Bagot's discovery requests, which were due no later than June 25, 2019, Defendant allegedly failed to comply with this Order. Plaintiff also argues that Defendant did not object on grounds of privilege against self-incrimination or any other ground, Defendant simply refused to comply. Plaintiff asserts that this failure to cooperate resulted in sanctions being imposed, which Defendant apparently has also refused to pay. There is a question whether "the court" as referenced in the statute means the bankruptcy court only, or might it mean another court such as the Kings County Court. But this point is not developed in the papers. Thus, Plaintiff has likely pled sufficient facts to survive the motion to dismiss.

G. §727(a)(7)

This statute provides: "The court shall grant the debtor a discharge, unless—the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider[.]"

As discussed above, Plaintiff alleges that Defendant committed the acts in (2), (3), and (6) within 1 year of the petition date. Also as discussed above, Plaintiff's complaint alleges various acts of misconduct during the pendency of the bankruptcy case, including knowingly providing false information in his bankruptcy schedules. Again, the question arises whether the malfeasance in another case must be one under Title 11. But the point is

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not developed so the pleading seems sufficient.

Chapter 7

H. §727(a)(12)

This section states: "The court shall grant the debtor a discharge, unless— the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)."

As Plaintiff argues, the complaint details the fraudulent sale of unregistered securities by Defendant, an unregistered security broker/dealer, in Defendant's alter ego entities including Renewable Technologies Solutions, Inc. and SMRB, LLC (d.b.a. Green Acres Pharms) (and possibly Green Acres Pharms, LLC, from whom the "Distribution" was paid), as well as his improper conduct while acting in a fiduciary capacity with respect to these dealings and entities. Therefore, Plaintiff has sufficiently pled the first element of this claim. With respect to the second element, there must be pending a proceeding in which the debtor may be found guilty of a felony or liable for a debt of the kind described in §522(q)(1); Plaintiff's complaint provides sufficient details his pending proceeding against Defendant for, among other things, violating State securities laws and relevant disclosure requirements. Thus, this cause of action is likely sufficient to survive the motion.

I. §523(a)(2)(A)

This section states: "A discharge under section 727, 1141, 1192 [1]

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1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any 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[.]" The debtor's intent to deceive may be inferred by circumstantial evidence under the 'totality of the circumstances' test. *In re Eashai*, 87 F.3d 1082, 1087 (9th. Cir. 1996). Under the relevant test, the Court "may infer the existence of the debtor's intent not to pay if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor." *Id.*

As discussed above, the complaint provides ample detail of Defendant's alleged fraudulent misconduct including, allegedly making false statements about his companies' financial situations, matters of ownership, etc. in connection with soliciting investment from Plaintiff. Plaintiff points out that the WSLCB report made several of these findings, all of which are incorporated into the complaint as an exhibit. In sum, there appears to be sufficiently detailed allegations, taken as true, to satisfy the pleading requirements, including those of Rule 9b.

J. §523(a)(4)

This section provides: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) 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[.]"

For purposes of § 523(a)(4), embezzlement is defined as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269, 16 S. Ct. 294, 295, (1885). Further, as explained in *Murray v. Woodman (In re Woodman)*, 451 B.R. 31 (Bankr. D.Idaho), "an

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intent to deprive the rightful owner of funds only temporarily and not permanently [does] not negate the element of [fraudulent] intent." *Id.* at 43. "To prevail under § 523(a)(4) for larceny, a creditor must prove that "the debtor has wrongfully and with fraudulent intent taken property from its owner. Larceny differs from embezzlement in the fact that the original taking of property was unlawful, and without the consent of the injured person." *King v. Lough (In re Lough)*, 422 B.R. 727, 735-36 (Bankr. D. Id. 2010). (internal citations omitted)

The complaint appears to allege both embezzlement and larceny while Defendant was acting in a fiduciary capacity. Taking Plaintiff's allegations as true, Defendant obtained money from Plaintiff which he was required to – on two different occasions – provide directly to SMRB, LLC (d.b.a. Green Acres Pharms). Plaintiff alleges that Defendant not only obtained these funds unlawfully from Plaintiff, Defendant either never provided Plaintiff's funds to SMRB or improperly removed them and has failed to provide any accounting for these funds or explain their disappearance, without the consent of Plaintiff. Again, taking Plaintiff's allegations as true, Plaintiff does appear to have pled sufficient facts to survive the motion.

K. §523(a)(6)

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title 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[.]" Section 523(a)(6)'s willful injury requirement is met when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002). Plaintiff's complaint is replete with allegations of knowing misconduct, including fraud, breach of contract, breach of fiduciary duty, unjust

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enrichment, etc. Specifically, Plaintiff alleges that false statements in certain written materials induced Plaintiff to invest Defendant's ventures. Taken as true, the allegations in the complaint are sufficient to satisfy the willfulness portion of the statute.

Courts treats the malicious injury requirement of § 523(a)(6) as separate from the willful requirement. According to *In re Jercich* 238 F.3d 1202, 1209 (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.'" *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002). Plaintiff alleges conduct that, if true, would satisfy the maliciousness portion of the statute. For example, Plaintiff's complaint alleges that Defendant knowingly made material misstatements or omissions the written material provided to Plaintiff, which ultimately allowed Defendant to obtain the hundreds of thousands of dollars from Plaintiff. Plaintiff alleges that Defendant knew that the money acquired from Plaintiff had not gone for the benefit of SMRB or to purchase an oil processing machine, and also knew that significant damage to plaintiff would certainly result if the money could not be returned to Plaintiff. The WSLCB report also concludes on page 9 that it appears that the investors taken in by Defendant (Plaintiff among them) were the victims of a fraudulent "Ponzi Scheme." For these reasons, Plaintiff's complaint has sufficiently stated claim under section 523(a)(6).

L. Attorney's Fees Under §523(d)

This section states: "If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special

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circumstances would make the award unjust." As should be obvious, none of Defendant's debts have been discharged in connection with the section 523(a)(2) claim as we are still at the pleading stages. Thus, this request for attorney's fees by Defendant is premature and is thus denied.

III. Conclusion

The court does not see a failure of subject matter jurisdiction. The court is persuaded Plaintiff's complaint, though it could be made clearer in places by pin citation to the attached WSLCB report and in a few places raise some dubious theories, does appear to have stated enough for relief under every theory alleged. This is not to say that Plaintiff will succeed on every theory alleged, but simply that the basic pleading requirements have been satisfied.

Deny

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that

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the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and illegal under federal law.

Even though cannabis sale has now been legal in several states for several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.'

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Republic Molding Corp. v. B.W. Photo Utils., 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue. The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before

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the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not cause mandatory dismissal." *Id.* at *7.

The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to

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give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

Perhaps the better questions are, should only part of the court's jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Steven Bagot

Represented By
Heidi Urness

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Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01201 Bagot v. Griffithe

#17.10 Motion For Temporary Abstention

Docket 29

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 3/5/20:

This is the Plaintiff's motion for "Temporary Abstention" and for stay of the pending litigation in favor of a proceeding in Washington State Court. Oddly, the motion is not brought for permissive abstention under 28 U.S.C. § 1334(c) but rather under the court's "inherent power to regulate their dockets and should use it to stay litigation pending resolution of another case or arbitration proceeding where it will dispose of or narrow the issues to be resolved in that litigation." *In re Barney's Inc.*, 206 B.R. 336, 343-44 (Bankr. S.D.N.Y. 1997). As near as the court can determine, the standards are largely the same.

It is well established that a federal court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-707, 117 S. Ct. 1636 (1997); see also *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."); *O'Dean v. Tropicana Cruises International, Inc.*, 1999 WL 335381, *4 (S.D.N.Y. 1999) (federal court suspended action pending disposition of arbitration proceeding); *Evergreen Marine Corp. v. Welgrow International, Inc.*, 954 F.Supp. 101, 103-105 (S.D.N.Y. 1997)

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(authorized stay in federal proceedings pending disposition of related foreign action).

The Ninth Circuit has enumerated factors a bankruptcy court should weigh when it considers whether to permissively abstain from hearing a matter before it. See *Christiansen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990). Those factors include: (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 non-bankruptcy 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 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 non-debtor parties.

Plaintiff cites a less exhaustive five factor analysis for suspending or staying a nondischargeability action as follows: (1) The burden of the proceeding on the defendant; (2) The interest of the plaintiff in expeditiously pursuing the action and prejudice resulting from any delay; (3) The convenience of the court in the management of its cases and the efficient use of judicial resources; (4) The interests of non-parties to the litigation; and (5) The interest of the public in the pending civil and criminal litigation. *In re Government Securities Corp.*, 81 B.R. 692, 694 (Bankr. S.D. Fla. 1987). See also, *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 809 (N.D. Cal. 1989).

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Although the parties do not agree on which set of factors is correct, the parties do agree that not all of the above factors are applicable nor are they of equal weight. Plaintiff's most persuasive argument for abstention from this court, and one that Defendant does not dispute, is that Plaintiff and Defendant are already heavily engaged in an action in Washington state court. According to Plaintiff, the allegations in the state court action mirror those of the allegations made in this adversary proceeding. Defendant argues that this is a false assertion as there is no mention of anything in the Washington state court action that mirror Plaintiff's §727 claims, although Defendant does concede that Plaintiff's §523 claims are mirrored by the allegations in the Washington state court action. The Washington state court action was filed over a year ago and is reportedly set for trial in April of 2020. Consequently, it seems feasible for the Washington matter to proceed to trial and judgment on the issues underlying the §523(a) claims (and certain of the §727 theories involving pre-petition behavior). Provided that Plaintiff is careful in obtaining detailed and clear findings, Plaintiff can then resolve this adversary proceeding under collateral estoppel theories by Rule 56 motion. To the extent that Defendant is correct in his assertion that Plaintiff's §727 claims are not mirrored in the state court action, Plaintiff asserts that he will simply drop those claims as they will likely be unnecessary after the state court rules on the underlying claims. Plaintiff has already obtained relief from stay. Considering the resources that the parties have already expended in Washington, including pre-trial motions, discovery, etc., the parties should likely finish what they started up there. This approach would conserve resources here and would not likely result in duplication of effort.

Concerning the administrative law claims and SEC claims pending in Washington State against Defendant, Plaintiff argues that resolution of these claims will help narrow the issues even further or could even provide additional probative details, which Plaintiff argues is a proper justification for abstention. Defendant argues that these other cases should not be considered for purposes of abstention because they do not directly involve

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Plaintiff, but this argument is less compelling because Defendant does not attempt to argue that such litigation would not serve to narrow the issues or provide useful additional background. Defendants other arguments against abstention, including the recent withdrawal of Defendant's counsel and a vague argument regarding the purported untimeliness of this motion, do not really move the needle in Defendant's favor. Related to the purported untimeliness of this motion is Defendant's argument that this motion is premature because if Defendant's dismissal motion is granted, then this motion becomes essentially moot. Plaintiff notes that Defendant cites no authority for the proposition that dismissal of the complaint would also end the Washington state court action. Defendant's argument also ignores that complaints after Rule 12 motions can be (and very likely would be) amended if they are found to be defective.

In sum, Plaintiff has made a persuasive case for staying proceedings in this court and allowing the parties to litigate what are largely matters of state law in Washington state court, especially since the parties are on the doorstep of trial. Thus, as Plaintiff urges, the court should use its power under §105(a) to temporarily abstain or stay this adversary proceeding pending resolution in Washington state court. Plaintiff is cautioned to obtain clear and dispositive findings on the operative issues such that collateral estoppel can govern in subsequent Rule 56 motion.

Grant abstention. This adversary proceeding is stayed until Plaintiff seeks to return for a Rule 56 motion. The court will schedule a status conference approximately 180 days out for evaluation.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

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Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Steven Bagot

Represented By
Heidi Urness
Richard H Golubow
Peter W Lianides

Trustee(s):

Thomas H Casey (TR)

Pro Se

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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

#18.00 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 10-31-19 per order approving stip. to cont. pre-trial conference and all other dates entered 10-4-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO JULY 2, 2020 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE AND ALL OTHER DATES ENTERED 2/12/2020**

Courtroom Deputy:

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

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CONT... Point Center Financial, Inc.

Chapter 11

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

U.S. Trustee(s):

United States Trustee (SA) Pro Se

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8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:16-01045 Howard B. Grobstein, Chapter 7 Trustee v. Benice et al

#19.00 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 11-07-19 per order on further stipulation entered 11-07-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-02-20 AT 10:00 A.M.
PER ORDER ON FURTHER STIPULATION TO EXTEND PRE-TRIAL
DATES ENTERED 1-14-20**

Courtroom Deputy:

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.

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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):

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

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8:18-11185 Richard Ryan Farino

Chapter 7

Adv#: 8:18-01134 Hile v. Farino

#20.00 PRE-TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt pursuant to 11 U.S.C. Section 523(a)(2)(A) (cont'd from 11-07-19 per order granting stipulation of counsel regarding amendment to s/c and scheduling order entered 9-30-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER REGARDING CONTINUING DATES LISTED IN THE
PRIOR SCHEDULE ORDER ENTERED 2-12-20**

Courtroom Deputy:

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

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11:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

Adv#: 8:19-01196 The United States Trustee For Region 16 v. Nguyen

**#21.00 STATUS CONFERENCE RE: Complaint Objecting to Discharge of Debtor
Pursuant to 11 U.S.C. Section 727
(cont'd from 3-05-20 per order approving ustr's aplic to re-schedule s/c
entered 1-21-20)**

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 3/5/20:
See #22

Tentative for 12/12/19:
Status conference continued to March 5, 2020 at 10:00AM. Court expects
judgment motion in meantime.

Party Information

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

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Hearing Room 5B

11:00 AM

CONT...

Stephen Nguyen

Nanette D Sanders

Chapter 7

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

Thursday, March 5, 2020

Hearing Room 5B

11:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

Adv#: 8:19-01196 The United States Trustee For Region 16 v. Nguyen

#22.00 Motion For Default Judgment Under LBR 7055-1

Docket 11

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative for 3/5/20:
Grant.

Party Information

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, March 5, 2020

Hearing Room 5B

11:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 7

**#23.00 Emergency Motion for Order Authorizing Abandonment of Real Property and Medical Practice
(OST signed 3-2-2020)**

Docket 222

Courtroom Deputy:

Telephonic Appearance: Najah J. Shariff

Tentative Ruling:

Tentative for 3/5/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

Dale Garfield Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Joint Debtor(s):

Cheryl Lynn Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Movant(s):

Karen S Naylor (TR)

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, March 10, 2020

Hearing Room 5B

10:30 AM

8:19-14783 Jane Ellen Mills and Patrick Thomas Mills

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

F.C. ORANGE ASSOCIATES LP
Vs.
DEBTORS

Docket 20

Tentative Ruling:

Tentative for 3/10/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Jane Ellen Mills

Represented By
Scott Dicus

Joint Debtor(s):

Patrick Thomas Mills

Represented By
Scott Dicus

Movant(s):

F.C. ORANGE ASSOCIATES L.P.

Represented By
Scott Andrews

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 10, 2020

Hearing Room 5B

10:30 AM

8:19-14917 Michael Gordon

Chapter 7

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

TURTLE RIDGE APARTMENTS LLC
Vs.
DEBTOR

Docket 11

Tentative Ruling:

Tentative for 3/10/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Michael Gordon

Represented By
Ginger Marcos

Movant(s):

Turtle Ridge Apartments LLC

Represented By
Richard Sontag

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 10, 2020

Hearing Room 5B

10:30 AM

8:20-10391 Elycia M. Myers

Chapter 7

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

THE IRVINE COMPANY LLC
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 3/10/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Elycia M. Myers

Represented By
Timothy McFarlin

Movant(s):

THE IRVINE COMPANY LLC

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, March 10, 2020

Hearing Room

5B

10:30 AM

8:18-13237 William Rafael Castro and Marylyn Helen McCormack De

Chapter 13

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA INC
Vs.
DEBTOR

Docket 69

Tentative Ruling:

Tentative for 3/10/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

William Rafael Castro

Represented By
Amanda G Billyard

Joint Debtor(s):

Marylyn Helen McCormack De

Represented By
Amanda G Billyard

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, March 10, 2020

Hearing Room 5B

10:30 AM

8:16-12484 Robert Arcadio Acosta

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-18-20)**

LA CASA REAL OWNERS ASSOCIATION
Vs.
DEBTOR

Docket 41

***** VACATED *** REASON: OFF CALENDAR; ORDER GRANTING
RELIEF FROM STAY ENTERED 3-9-20.**

Tentative Ruling:

Tentative for 3/10/20:
Status?

Tentative for 2/18/20:
Status?

Tentative for 2/4/20:
Grant unless current or APO. Lack of statements, even if true, is a lame
excuse on what should be a recurring monthly obligation. Also, the court has
little sympathy for post-petition defaults.

Party Information

Debtor(s):

Robert Arcadio Acosta

Represented By
Brian J Soo-Hoo

Movant(s):

La Casa Real Owners Association

Represented By
Alyssa B Klausner

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

Tuesday, March 10, 2020

Hearing Room 5B

10:30 AM

CONT... Robert Arcadio Acosta

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 10, 2020

Hearing Room 5B

10:30 AM

8:16-14563 Sherri Lynn Spoor

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 3/10/20:

The court would be more receptive to the requested delay were the sale part of the plan or there were not post confirmation arrears of three months.

There is no indication that a trustee's sale is imminent so debtor has at least 60 days in any event. *Grant.*

Party Information

Debtor(s):

Sherri Lynn Spoor

Represented By
Sunita N Sood

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Nancy L Lee
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, March 10, 2020

Hearing Room 5B

10:30 AM

8:18-12052 Frank Bowers, Jr.

Chapter 13

**#7.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-18-20)**

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 74

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION FOR RELIEF FROM THE AUTOMATIC
STAY FILED 2-21-20**

Tentative Ruling:

Tentative for 2/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Frank Bowers Jr.

Represented By
Peter Rasla

Movant(s):

U.S. BANK NATIONAL

Represented By
Jamie D Hanawalt
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 10, 2020

Hearing Room 5B

10:30 AM

8:19-13000 Dale Grabinski

Chapter 13

**#8.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-11-20)**

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 48

Tentative Ruling:

Tentative for 3/10/20:
Same.

Tentative for 2/11/20:
Deny if Movant confirms Debtor is current.

Party Information

Debtor(s):

Dale Grabinski

Represented By
Christopher J Langley

Movant(s):

JPMorgan Chase Bank, National

Represented By
Nancy L Lee
Kristin A Schuler-Hintz

Trustee(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 10, 2020

Hearing Room 5B

10:30 AM

8:19-13420 James Swaner and Allyson Swaner

Chapter 13

**#9.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-11-20)**

HSBC BANK USA
Vs.
DEBTORS

Docket 38

Tentative Ruling:

Tentative for 3/10/20:
Status?

Tentative for 2/11/20:

Continue for parties to do an accounting. If the funds behind the uncashed checks are still on deposit, it should be possible to resolve this. However, the court takes a dim view of post-confirmation defaults.

Party Information

Debtor(s):

James Swaner

Represented By
Tina H Trinh

Joint Debtor(s):

Allyson Swaner

Represented By
Tina H Trinh

Movant(s):

HSBC Bank USA, National

Represented By
Angie M Marth

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

Tuesday, March 10, 2020

Hearing Room 5B

10:30 AM

CONT... James Swaner and Allyson Swaner

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 10, 2020

Hearing Room 5B

10:30 AM

8:20-10493 Terry Gonzalez

Chapter 13

**#9.10 Motion In Individual Case For Order Imposing a Stay or Continuing The Automatic Stay as the Court Deems Appropriate
(OST Signed 2-26-20)**

Docket 13

Tentative Ruling:

Tentative for 3/10/20:
Grant if there is no opposition.

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, March 10, 2020

Hearing Room

5B

11:00 AM

8:20-10386 Exclusive Lifestyle Properties, Inc.

Chapter 7

#10.00 Order To Appear And Show Cause Why Case Should Not Be Dismissed. The Case Was Filed Without An Attorney.

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED-
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE
SCHEDULES ENTERED 2-26-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exclusive Lifestyle Properties, Inc. 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, March 10, 2020

Hearing Room 5B

11:00 AM

8:20-10441 Scot Matteson

Chapter 7

#11.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against an Individual.

Docket 1

***** VACATED *** REASON: CONTINUED TO APRIL 7, 2020 PER STIPULATION ORDER ENTERED 3-9-20.**

Tentative Ruling:

Tentative for 3/10/20:

The timing in this case is muddled because two summons were issued and the deadline to respond to the reissued summons is after the hearing on the status conference in this case. It might be best to continue this status conference to March 17, 2020 at 10:00 a.m. so that the court can evaluate any response that is filed. If no response is received, the order for relief should be entered.

Party Information

Debtor(s):

Scot Matteson

Pro Se

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

Tuesday, March 10, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#12.00 Application to Employ Shulman Bastian LLP as Special Counsel (Application to Expand the Scope of Employment) retroactive to May 10, 2017

Docket 2731

Tentative Ruling:

Tentative for 3/10/20:

This is the Trustee's Application to Expand the Scope of Employment of applicant's special litigation counsel, Shulman & Bastian, *retroactive to May 10, 2017*. The application is opposed by Scott Gladstone, one of the named defendants in the subject adversary proceeding. The court will start by saying this is bad practice, and a surprising and disappointing lapse from that which the court has come to expect given the long experience of both Trustee and the Shulman firm. The question presented is whether it is (or should be) fatal to the application. There is also an issue of conflict of interest.

As the court understands it, the following are the important background facts:

1. The Shulman firm was initially engaged by order entered October 27, 2016 on an hourly basis for the limited purpose of analyzing D&O coverage regarding Mr. Gladstone and potentially other officers and directors. The fees were capped at \$25,000 unless discovery were required, in which case the cap would move to \$50,000. The application made clear that if an adversary proceeding were to commence, a new and additional application would be required. The \$25,000 has already been paid to the Shulman firm on the initial engagement.
2. This investigation was animated at least in part by the filing of

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

Tuesday, March 10, 2020

Hearing Room

5B

11:00 AM

CONT...

Anna's Linens, Inc.

Chapter 7

adversary proceeding 8:15-ap-01293TA against the estate under the WARN Act. Apparently, the Shulman firm has since advised that if liability is fixed under the WARN Act this would justify moving forward under an adversary proceeding against officers and directors. The current status of the WARN Act proceeding is left unclear in the papers as is the conclusion of the Shulman firm on whether D&O coverage exists. The court does read that the Trustee has engaged new D&O coverage counsel [see motion p. 18, lines1-2]

3. Despite the promise referenced above in the previous employment application that if litigation were undertaken there would be a new application for employment of the Shulman firm specifying new terms, without such an application the Shulman firm filed an adversary proceeding for breach of fiduciary duty and negligence on June 14, 2017 17:ap-01105TA on behalf of the Trustee. Allegedly, this was filed to preserve a statute of limitations about to expire. Since this application for expanded employment is now filed over 30 months later, some analysis is required of the circumstances. While certainly not blowing a statute of limitations is an important consideration, the court is surprised to learn that the Shulman firm has already accrued \$30,000 in fees and costs for which it apparently also will seek allowance on a *nunc pro tunc* basis. To prepare and file a complaint?
4. Another issue arises over whether the Shuman firm has a disqualifying conflict under §327(c).
5. Apparently, the parties have been postponing activity on the subject adversary proceeding by continuing stipulation for these last 30 months. It looks like this was done so that other matters, such as resolution of certain Vendor claims and maybe the WARN Act lawsuit, could be first resolved, but that is left largely unclear in the papers.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, March 10, 2020

Hearing Room 5B

11:00 AM

CONT...

Anna's Linens, Inc.

Chapter 7

A. Conflict of Interest?

Both sides appear to concede that if the Shulman firm has an actual conflict of interest, that is fatal to the employment. See 11 U.S.C. §327(c) Gladstone also argues for a more expansive interpretation of "adverse interest" within the meaning of §327(e) which has been defined to include "any interest or relationship, however slight, that would even faintly color the independence and impartial attitude required by the Code and Bankruptcy Rules." *In re Granite Partners, L.P.*, 219 B.R. 22, 33 (Bankr. S.D.N.Y. 1998). Gladstone argues that 11 U.S.C. §327(a) is intended to hold professionals performing duties for the estate to strict fiduciary standards and is concerned with a professional's divided loyalties and ensuring that professionals employed by the estate have no conflicts of interest with the estate. See *In re Envirodyne Indus., Ind.*, 150 B.R. 1008, 1016 (Bankr. N.D. Ill. 1993).

The Shulman firm has represented a list of persons, catalogued at ¶18 of Mr. Bastian's Declaration, reportedly in connection with evaluating those persons' rights as participants in the debtor's Deferred Compensation Plan. Mr. Bastian offers his view that it was a limited engagement and in no way could create a conflict in the adversary proceeding. He even proclaims that these creditors (and the Trustee) are prepared to waive any conflict (but nothing concrete is offered). He also argues that this engagement was disclosed in the initial employment application but, since no one objected at that time, it must be of little consequence. The court is not so sure. The big difference here is that litigation has now been initiated, and so now it is not about investigation of D&O coverage but about fixing liability for alleged breaches; Mr. Gladstone alleges that several of these persons were officers and managers of the debtor. So, even if the Trustee does not sue these creditors directly it is alleged that cross complaints against these persons by Mr. Gladstone for indemnity should be

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, March 10, 2020

Hearing Room

5B

11:00 AM

CONT...

Anna's Linens, Inc.

Chapter 7

expected. This is a cause for concern. Can the Trustee and the court rest assured that the Shulman firm will vigorously prosecute if these former clients are now cross-defendants? Were confidences about these parties' role in management imparted to the Shulman firm?

B. Is *nunc pro tunc* employment appropriate?

Gladstone is correct that *nunc pro tunc* employment of professionals starts with analysis of an initial two prongs: (1) whether the applicant has satisfactorily explained its failure to apply for court approval on a timely basis and (2) whether the applicant's services have benefitted the estate. *In re Atkins*, 69 F. 3d 970,976 (9th Cir. 1995). Only if those two initial conditions are satisfied then the court may consider the additional factors in cases like *In re Twinton Properties Partnership*, 27 B.R. 817, 819-20 (Bankr. M.D. Tenn.1983) in its discretion. Value was conferred by the filing of the complaint, presumably, but we may have to revisit whether \$30,000 is a reasonable fee for filing a complaint. But the first factor, i.e. satisfactory explanation of the delay, is not so clear.

First, as the court has said above, this was an appallingly long delay and so the necessity to adequately explain is consequently higher. But the question is made closer by the Declaration of Nanette Sanders whose firm served as Trustee's general counsel. She cryptically references "acrimonious" discussions with other counsel (Brutkus Gubner?) who apparently also wanted a hand in prosecuting Mr. Gladstone. In the meantime, there was an attempt mentioned at ¶¶ 6-8 to negotiate a broader settlement to include Mr. Gladstone. Most importantly, at ¶ 6, lines 16-20, Ms. Sanders admits the Trustee specifically asked the applicant to "hold off on filing the application to expand the firm's employment so that issues with her other counsel

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

Tuesday, March 10, 2020

Hearing Room

5B

11:00 AM

CONT...

Anna's Linens, Inc.

Chapter 7

could be resolved." This goes a long way to explaining the delay, but it is less clear that the explanation is "adequate." It would have been helpful if the court could understand the competing concerns motivating the Trustee to hold back on employment in an adversary proceeding where apparently applicant was already \$30,000 in, and then why other approaches such as employment but with a follow-on stipulation to moratorium, were not used. Was this just going soft on feelings of counsel or was something more fundamental at work? But to simply delay for 30 months really stretches adequacy of the explanation for *nunc pro tunc* treatment.

The court will hear argument on these points.

No tentative

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

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

Tuesday, March 10, 2020

Hearing Room 5B

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**

Tuesday, March 10, 2020

Hearing Room 5B

11:00 AM

8:18-11370 Shamrock Group, Inc.

Chapter 7

#13.00 Trustee's Final Report And Application For Compensation:

THOMAS H. CASEY, CHAPTER 7 TRUSTEE

THOMAS H. CASEY, ESQ., ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, ACCOUNTANT FOR TRUSTEE

UNITED STATES TRUSTEE, U.S. TRUSTEE QUARTERLY FEES

FRANK CHAVEZ, OTHER PROFESSIONAL FEE

INDEPENDENT MANAGEMENT SERVICES, OTHER PROFESSIONAL FEES

FRANCHISE TAX BOARD, OTHER STATE OR LOCAL TAXES

FRANK CHAVEZ, OTHER PROFESSIONAL EXPENSES

INDEPENDENT MANAGEMENT SERVICES, OTHER PROFESSIONAL EXPENSES

Docket 311

Tentative Ruling:

Tentative for 3/10/20:
Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Shamrock Group, Inc.

Represented By
David M Goodrich
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, March 10, 2020

Hearing Room 5B

11:00 AM

CONT... Shamrock Group, Inc.

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

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

Tuesday, March 10, 2020

Hearing Room 5B

11:00 AM

8:19-10120 Raymond Potlongo and Wendy Potlongo

Chapter 7

#14.00 Trustee's Final Report And Application For Compensation:

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

Docket 59

Tentative Ruling:

Tentative for 3/10/20:
Allow as prayed. Appearance is optional.

Party Information

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

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

Tuesday, March 10, 2020

Hearing Room 5B

11:00 AM

8:19-14245 Tae H Ko

Chapter 7

#15.00 Debtor's Notice Of Motion And Motion To Vacate Dismissal And Reinstate Case

Docket 43

Tentative Ruling:

Tentative for 3/10/20:
Grant.

Party Information

Debtor(s):

Tae H Ko

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Tuesday, March 10, 2020

Hearing Room 5B

11:00 AM

8:09-22699 Cheri Fu

Chapter 7

#16.00 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 7-02-19 per order approving stipulation entered 6-11-19)

Docket 383

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 22, 2020
AT 11:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING ENTERED 3/3/2020**

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**

Wednesday, March 11, 2020

Hearing Room 5B

10:00 AM

8:17-13089 Cypress Urgent Care, Inc.

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 And Submit U.S. Trustee Post-Confirmation Reports

Docket 313

***** VACATED *** REASON: OFF CALENDAR; VOLUNTARY
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT
DEBTORS' CASE UNDER 11 U.S.C. SECTION 1112(b)**

Tentative Ruling:

- NONE LISTED -

Party Information

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, March 11, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

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 46

Tentative Ruling:

Tentative for 3/11/20:

Grant. Dismiss or convert the case to chapter 7, whichever U.S. Trustee believes is best.

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

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

Wednesday, March 11, 2020

Hearing Room 5B

10:00 AM

8:19-12812 Legrace Corp

Chapter 11

#3.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization

Docket 93

Tentative Ruling:

Tentative for 3/11/20:

The form used is for individual debtors, whereas debtor is a corporation. Further, the useable informaion is almost non-existent. Apparently, unsecured creditors are paid nothing, yet no discussion of absolute priority rule appears anywhere.

Continue for revision.

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, March 11, 2020

Hearing Room 5B

10:00 AM

8:16-12943 Jalal Neishabouri

Chapter 11

**#4.00 Post-Confirmation Status Conference
(con't from 12-4-19)**

Docket 115

Tentative Ruling:

Tentative for 3/11/20:
Off calendar. Motion for final decree is in process.

Tentative for 12/4/19:
Continue status report about 90 days. Court expects motion for final decree
in meantime.

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?

Party Information

Debtor(s):

Jalal Neishabouri

Represented By

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

Wednesday, March 11, 2020

Hearing Room 5B

10:00 AM

CONT...

Jalal Neishabouri

Marc C Forsythe
Charity J Manee
Mark Evans

Chapter 11

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

Wednesday, March 11, 2020

Hearing Room 5B

11:00 AM

8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

**#5.00 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 3-4-20)**

Docket 118

Tentative Ruling:

Tentative for 3/11/20:

An updated status report would have been useful. When can final decree be anticipated?

Tentative for 3/4/20:

Continue to March 11, 2020 at 10:00AM.

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

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

Thursday, March 12, 2020

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))
(con't from 9-12-19 per order approving stip. to cont. deadline for plaintiff to file its renewed motion for summary judgment)

Docket 1

Tentative Ruling:

Tentative for 3/12/20:

So what is status? At earlier conferences there was discussion about a Rule 56 motion, but nothing appears to be on file. Continue to coincide with pre-trial conference on March 26, 2020 at 10:00AM.

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.

**United States Bankruptcy Court
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Santa Ana
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Thursday, March 12, 2020

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10:00 AM

CONT... Cheri Fu

Chapter 7

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

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 12, 2020

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)]
(cont'd from 01-09-20 per order on stip to cont. s/c entered 1-7-20)

Docket 1

Tentative Ruling:

Tentative for 3/12/20:
Status?

Tentative for 9/5/19:
Why no status report? Status of state court matter?

Tentative for 4/11/19:
Why no status report? Status of state court matter?

Tentative for 10/11/18:
Does plaintiff agree that a further delay pending appeal is the best course?

Tentative for 3/8/18:
Why no status report?

Party Information

Debtor(s):

Elmer Clarke

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 12, 2020

Hearing Room 5B

10:00 AM

CONT... Elmer Clarke

Chapter 7

Patrick J D'Arcy

Defendant(s):

Elmer Clarke

Pro Se

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
Courtroom 5B Calendar**

Thursday, March 12, 2020

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

#3.00 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 12-12-19)

Docket 1

Tentative Ruling:

Tentative for 3/12/20:
Status conference continued to June 25, 2020 at 10:00AM.

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?

Party Information

Debtor(s):

Stephen Nguyen

Represented By
Daniel King

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

Thursday, March 12, 2020

Hearing Room 5B

10:00 AM

CONT... Stephen Nguyen

Chapter 7

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, March 12, 2020

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #3.10** 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 2-27-20 per order re: stip. to cont. s/c entered 2-26-20)

Docket 1

Tentative Ruling:

Tentative for 3/12/20:

First, why the very late status report? Filing less than 2 days before the status conference not only violates the LBRs, it is an affront and imposition upon the court. Be prepared to discuss the suitable amount of sanctions.

Status conference continued to July 2, 2020 at 10:00AM.

Deadline for completing discovery: May 30, 2020

Last date for filing pre-trial motions: June 22, 2020

Pre-trial conference on:

Joint pre-trial order due per local rules.

Tentative for 2/27/20:

Is this resolved? Dismiss?

Tentative for 1/9/20:

See #3

Tentative for 12/19/19:

See #2.1

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 12, 2020

Hearing Room 5B

10:00 AM

CONT... Catherine M Haretakis

Chapter 11

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.

Party Information

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 12, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

**#4.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
[11 U.S.C. Section 523(a)(2)(A) and (a)(4)]
(cont'd from 1-16-20)**

Docket 1

Tentative Ruling:

Tentative for 3/12/20:

Motion to dismiss was continued to April 16, 2020 at 10:00AM by stipulation.
Continue to April 16, 2020 at 10:00AM.

Tentative for 1/16/20:

This conference will travel together with the dismissal motion. Tentative on
that is to continue to allow more briefing. Appearance not required.

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

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

Thursday, March 12, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

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, March 12, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

#5.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (a)(4)
(cont'd from 1-16-20)

Docket 10

***** VACATED *** REASON: CONTINUED TO APRIL 16, 2020 A 10:00
A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
HEARING DATE AND FURTHER BRIEFING SCHEDULE FOR
HEARING ON MOTION TO DISMISS COMPLAINT ENTERED 3/3/2020**

Tentative Ruling:

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying

**United States Bankruptcy Court
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Thursday, March 12, 2020

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CONT... Guy S. Griffithe

Chapter 7

cannabis business venture being simultaneously legal under state law and illegal under federal law.

Even though cannabis sale has now been legal in several states for several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.' *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

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10:00 AM

CONT...

Guy S. Griffithe

Chapter 7

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue. The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough

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CONT... Guy S. Griffithe

Chapter 7

debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not cause mandatory dismissal." *Id.* at *7.

The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit

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CONT... **Guy S. Griffithe**

Chapter 7

activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

Perhaps the better questions are, should only part of the court's jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

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
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Judge Theodor Albert, Presiding
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Thursday, March 12, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

**#6.00 STATUS CONFERENCE RE: Amended Adversary Complaint of
Nondischargeability and Exception from Discharge of Debts for Case KC069896
Samec vs. Griffithe et.al.
(cont'd from 1-16-20)(Amended Complaint filed 3-3-2020)**

Docket 47

Tentative Ruling:

Tentative for 3/12/20:
See #7.

Tentative for 1/16/20:
Same as #1. Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe Et.Al

Pro Se

Plaintiff(s):

Joseph Samec

Pro Se

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Thursday, March 12, 2020

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8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

#7.00 Plaintiff's Motion For Temporary Abstention

Docket 38

Tentative Ruling:

Tentative for 3/12/20:

This motion is largely indistinguishable from *Bagot v. Griffithe*; 8:19-ap-01201. The adopted tentative ruling from that case, incorporated below, also finds application here, and the motion should be granted. See below.

"Tentative for 3/5/20:

This is the Plaintiff's motion for "Temporary Abstention" and for stay of the pending litigation in favor of a proceeding in Washington State Court. Oddly, the motion is not brought for permissive abstention under 28 U.S.C. § 1334(c) but rather under the court's "inherent power to regulate their dockets and should use it to stay litigation pending resolution of another case or arbitration proceeding where it will dispose of or narrow the issues to be resolved in that litigation." *In re Barney's Inc.*, 206 B.R. 336, 343-44 (Bankr. S.D.N.Y. 1997). As near as the court can determine, the standards are largely the same.

It is well established that a federal court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-707, 117 S. Ct. 1636 (1997); see also *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."); *O'Dean v. Tropicana Cruises International, Inc.*, 1999 WL 335381, *4 (S.D.N.Y. 1999) (federal court suspended action

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CONT... Guy S. Griffithe

Chapter 7

pending disposition of arbitration proceeding); *Evergreen Marine Corp. v. Welgrow International, Inc.*, 954 F.Supp. 101, 103-105 (S.D.N.Y.1997) (authorized stay in federal proceedings pending disposition of related foreign action).

The Ninth Circuit has enumerated factors a bankruptcy court should weigh when it considers whether to permissively abstain from hearing a matter before it. See *Christiansen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990). Those factors include: (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 non-bankruptcy 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 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 non-debtor parties.

Plaintiff cites a less exhaustive five factor analysis for suspending or staying a nondischargeability action as follows: (1) The burden of the proceeding on the defendant; (2)The interest of the plaintiff in expeditiously pursuing the action and prejudice resulting from any delay;(3) The convenience of the court in the management of its cases and the efficient use of judicial resources; (4) The interests of non-parties to the litigation; and (5) The interest of the public in the pending civil and criminal litigation. *In re Government Securities Corp.*, 81 B.R. 692, 694 (Bankr. S.D. Fla. 1987). See also, *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805,

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CONT... Guy S. Griffithe
809 (N.D. Cal. 1989).

Chapter 7

Although the parties do not agree on which set of factors is correct, the parties do agree that not all of the above factors are applicable nor are they of equal weight. Plaintiff's most persuasive argument for abstention from this court, and one that Defendant does not dispute, is that Plaintiff and Defendant are already heavily engaged in an action in Washington state court. According to Plaintiff, the allegations in the state court action mirror those of the allegations made in this adversary proceeding. Defendant argues that this is a false assertion as there is no mention of anything in the Washington state court action that mirror Plaintiff's §727 claims, although Defendant does concede that Plaintiff's §523 claims are mirrored by the allegations in the Washington state court action. The Washington state court action was filed over a year ago and is reportedly set for trial in April of 2020. Consequently, it seems feasible for the Washington matter to proceed to trial and judgment on the issues underlying the §523(a) claims (and certain of the §727 theories involving pre-petition behavior). Provided that Plaintiff is careful in obtaining detailed and clear findings, Plaintiff can then resolve this adversary proceeding under collateral estoppel theories by Rule 56 motion. To the extent that Defendant is correct in his assertion that Plaintiff's §727 claims are not mirrored in the state court action, Plaintiff asserts that he will simply drop those claims as they will likely be unnecessary after the state court rules on the underlying claims. Plaintiff has already obtained relief from stay. Considering the resources that the parties have already expended in Washington, including pre-trial motions, discovery, etc., the parties should likely finish what they started up there. This approach would conserve resources here and would not likely result in duplication of effort.

Concerning the administrative law claims and SEC claims pending in Washington State against Defendant, Plaintiff argues that resolution of these claims will help narrow the issues even further or could even provide additional probative details, which Plaintiff argues is a proper justification for abstention. Defendant argues that these other cases should not be

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CONT... **Guy S. Griffithe**

Chapter 7

considered for purposes of abstention because they do not directly involve Plaintiff, but this argument is less compelling because Defendant does not attempt to argue that such litigation would not serve to narrow the issues or provide useful additional background. Defendants other arguments against abstention, including the recent withdrawal of Defendant's counsel and a vague argument regarding the purported untimeliness of this motion, do not really move the needle in Defendant's favor. Related to the purported untimeliness of this motion is Defendant's argument that this motion is premature because if Defendant's dismissal motion is granted, then this motion becomes essentially moot. Plaintiff notes that Defendant cites no authority for the proposition that dismissal of the complaint would also end the Washington state court action. Defendant's argument also ignores that complaints after Rule 12 motions can be (and very likely would be) amended if they are found to be defective.

In sum, Plaintiff has made a persuasive case for staying proceedings in this court and allowing the parties to litigate what are largely matters of state law in Washington state court, especially since the parties are on the doorstep of trial. Thus, as Plaintiff urges, the court should use its power under §105(a) to temporarily abstain or stay this adversary proceeding pending resolution in Washington state court. Plaintiff is cautioned to obtain clear and dispositive findings on the operative issues such that collateral estoppel can govern in subsequent Rule 56 motion.

Grant abstention. This adversary proceeding is stayed until Plaintiff seeks to return for a Rule 56 motion. The court will schedule a status conference approximately 180 days out for evaluation."

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

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Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

Defendant(s):

Guy Griffithe Et.Al

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph 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, March 12, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01200 Samec et al v. Griffithe

**#8.00 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.
(cont'd from 1-16-20)**

Docket 1

Tentative Ruling:

Tentative for 3/12/20:
See #9 and 10.

Tentative for 1/16/20:
See #4. The status conference will travel with any motion to dismiss.
Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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

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Trustee(s):

Thomas H Casey (TR)

Pro Se

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Adv#: 8:19-01200 Samec et al v. Griffithe

#9.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]
(cont'd from 1-16-20)

Docket 8

Tentative Ruling:

Tentative for 3/12/20:

This seems largely paralleded to *Bagot v. Griffithe*; 8:19-ap-1201. The adopted tentative ruling in that case is incorporated below. For the same reasons, the motion should be denied. See below.

"Tentative for 3/5/20:

This is the continued hearing on the Defendant's Rule 12(b) Motion to Dismiss. This analysis is divided into two sections. The first section deals with the subject matter jurisdiction issue. The second deals with whether claims for relief have been plausibly stated, sufficient to survive the motion.

I. Subject Matter Jurisdiction

At the hearing on January 16, 2020, because there was only sparse authority on the subject, the court requested supplemental briefing regarding whether this court had subject matter jurisdiction over this adversary proceeding in view of the parties' various connections to the cannabis industry (in violation of the Controlled Substances Act of 1970 ("CSA")). In its tentative ruling, the court summarized and excerpted portions of relevant case law and provided its own initial ideas on this narrow issue. That tentative ruling is incorporated herein by reference. Both sides have filed supplemental

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briefs on the narrow issue identified by the court.

Unfortunately, the supplemental briefing has not provided a definitive answer. Instead, Defendant has, again, cited the case of *Northbay Wellness Group, Inc. v. Beyries*, 2011 WL 5975445 (Bankr.N.D.Cal. 2011), where the bankruptcy court dismissed the debtor's case based on the equitable doctrine of *in pari delicto*. However, as this court noted in its earlier tentative ruling, the Ninth Circuit expressly overruled the bankruptcy court's application of the unclean hands doctrine on grounds that the bankruptcy court failed to properly balance the parties' respective wrongdoings.

In the interim, the court's own research has located case law within the Ninth Circuit that may be useful. In *Mann v. Gullickson*, 2016 WL 6473215 (N.D. Cal. Nov. 2, 2016), the court had to decide whether a contract related to the medical marijuana industry in California was enforceable. The court undertook a comprehensive analysis of the enforceability of contracts containing illegal subject matter. The court noted the specific prohibitions placed on marijuana by the CSA, but also noted that enforcement of contracts containing illegal subject matter resists hard and fast rules. Indeed, the *Mann* court observed that "[s]ometimes the forfeiture resulting from unenforceability is disproportionately harsh considering the nature of the illegality." *Id.* at *6. The court, citing the Ninth Circuit Case of *Bassidji v. Goe*, 413 F.3d 928 (9th Cir. 2005), devised a test of sorts for determining when contracts regarding illegal subject matter may nevertheless be enforceable:

"The Ninth Circuit analyzed federal case law and California precedents... to investigate '[n]uanced approaches to the illegal contract defense, taking into account such considerations as the avoidance of windfalls or forfeitures, deterrence of illegal conduct, and relative moral culpability,' and those considerations 'remain viable in federal court and represent no departure from [federal precedent] . . . [so] long as the relief ordered does not mandate illegal conduct.' *Id.* at

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937-38." *Mann*, 2016 WL 6473215 at *7.

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The *Mann* court also noted that "[t]he federal government's concern over the CSA's medical marijuana prohibition has waned in recent years, and the underlying policy purporting to support this prohibition has been undermined." *Id.* at *9. Noting that several states have legalized marijuana in one form or another, the *Mann* court held:

Given the federal government's wavering policy on medical marijuana in states that regulate this substance, and California's expressed policy interest in allowing qualified patients to obtain medical marijuana, the purported illegality here is not one the Court finds to mandate non-enforcement of the parties' contract. *Id.*

Here, the plaintiff is alleging breach of contract (among other related causes of action) against Defendant in connection with a marijuana concern. The court has already opined on the gross unfairness that would result if Defendant were allowed to use the bankruptcy system as a shield from his alleged misdeeds. The court also notes that, in the event Plaintiff prevails against Defendant in this adversary proceeding, this court would not be forcing either party to engage in illegal conduct. This was a major point raised in *Mann*, i.e. the issuance of a remedy would not necessarily entail a resort to unlawful conduct. Not only does this approach properly involve the balancing of relative wrongdoings as required by the Circuit in *Northbay*, it also harmonizes with the various cases where federal courts refused to become involved at all such as *In re Arenas*, 514 B.R. 887 (Bankr. D. Colo. 2012), because to do so would necessarily require someone to accommodate ongoing breach of the CSA, such as by selling contraband as assets of the estate.

Defendant argues that accepting jurisdiction would require the court to intervene proactively and thus improperly in what otherwise would have been Defendant's *carte blanche* ride to discharge. Implicit in this is the argument

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that the court should leave the wrongdoers where it finds them and only unusual action by the court offensive to the CSA would interrupt Defendant's ride to discharge. But this argument is unpersuasive because it could as easily be looked at another way, i.e. the court would be issuing a change in the status quo by granting the discharge, which is not a right but a privilege, and this action is to determine whether, balancing acts on both sides, that can or should be done consistent with justice. The court is thus persuaded that it *does* have subject matter jurisdiction, or at least that there is no compelling reason on these facts to decide otherwise.

II. Are Claims for Relief Adequately Stated?

Plaintiff's complaint alleges claims for relief under 11 U.S.C. §727(a) (2), (3), (4), (5), (6), (7) and (12), as well as under 11 U.S.C. §523(a)(2), (4), and (6) (10 causes of action in total). By this motion, Defendant seeks dismissal of all causes of action.

A. 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

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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.*

B. Alleged Factual Background

Defendant-Debtor Guy S. Griffithe is an individual who, at all times pertinent hereto, owed a fiduciary duty to Plaintiff Steven Bagot, among others, who "invested" in his companies. Defendant-Debtor allegedly made fraudulent verbal and written statements to solicit "investments" into SMRB, LLC, a Washington State licensed marijuana producer/processor business, and was a signatory to allegedly fraudulent documents underlying the non-bankruptcy litigation in Skagit County Superior Court Case No. 18-2-00544-29 and King County Superior Court Case No. 19-2-00772-9 SEA. Plaintiff provided no less than \$650,000.00 to the Defendant through his alter-ego entity (Renewable Technologies Solutions, Inc. ("RTSI")) for the benefit of SMRB, LLC. When Plaintiff sued to recover his "investment" and damages for Defendant-Debtor's alleged wrongful conduct, the Defendant-Debtor filed the relevant bankruptcy action as well as this motion to dismiss.

On January 9, 2019, Mr. Bagot filed a complaint with the King County Superior Court Case No. 19-2-00772-9 SEA alleging causes of action against Defendant-Debtor for fraud, negligent misrepresentation, civil conspiracy, breach of contract, unjust enrichment, conversion, promissory estoppel,

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breach of the fiduciary duties, breach of the duties of good faith and fair dealing, violations of Washington's LLC disclosure requirements and violations of securities laws. The trial is set for April 6, 2020. The complaint is accompanied by Ex. "A", a report by the Washington State Liquor and Cannabis Board ("WSLCB report"), which provides details of Defendant's alleged misconduct and is heavily referenced in both the complaint and the opposition to this motion. Below the court analyzes how each of the alleged claims for relief fit with this background.

B. §727(a)(2)(A)

This statute provides: "The court shall grant the debtor a discharge, unless— 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— property of the debtor, within one year before the date of the filing of the petition[.]" Plaintiff has sufficiently pled this cause of action in the complaint. Specifically, Plaintiff alleges, with the aid of Exhibit A, that Defendant intentionally transferred valuable property belonging to him which reduced the assets available to the creditors and which was made with fraudulent intent. Plaintiff alleges that Defendant has transferred (to his alter ego entities, Robert Russell, entities owned by Russell, and other entities not known to Plaintiff), removed, destroyed, mutilated, or concealed his property, including the funds provided to him by Mr. Bagot, the oil processing machine, \$1,000,000 million in product from Emerald City Cultivation, and other assets Defendant claims to have utilized (a portion of) these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge. Plaintiff also asserts that this conduct occurred within 1-year of the petition date (June 26, 2019) as Plaintiff

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initiated legal proceedings against Defendant in late spring of 2018.

C. §727(a)(3)

This statute provides: "The court shall grant the debtor a discharge, unless— 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" It is apparent that Plaintiff has adequately made this allegation in the complaint. Specifically, Plaintiff alleges in several places in the complaint the absence of adequate record keeping by Defendant as noted throughout, specifically in regard to Plaintiff's initial investment of \$450,000. Plaintiff also alleges the absence of adequate records related to the purchase of the oil-processing machine and the products purchased from Emerald City Cultivation among other assets. Plaintiff also asserts that he has been attempting to obtain such documentation through discovery without success. Thus, it appears that Plaintiff has adequately alleged that Defendant failed to keep relevant records, and there does not appear to be justification for this failure, taking Plaintiff's allegations as true.

D. §727(a)(4)

This statute provides: "The court shall grant the debtor a discharge, unless— the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

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(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(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[.]"

This statute requires that Plaintiff allege: (1) [the debtor] made a statement under oath; (2) the statement was false; (3) [the debtor] knew the statement was false; (4) [the debtor] made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *Matter of Beaubouef*, 966 F.2d 174, 178 (5th Cir 1992). False oaths sufficient to justify the denial of discharge include: (1) a false statement or omission in the debtor's schedules or (2) a false statement by the debtor at the examination during the course of the proceedings. *Id.* at 178; *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir.1999). Plaintiff's complaint, including the exhibits, does allege that Defendant made several intentional false statements relating to the bankruptcy case. For example, Plaintiff alleges that Defendant has failed to report or disclose several assets, including the hundreds of thousands of dollars he took from Plaintiff and never provided to SMRB, LLC. Plaintiff argues, citing *In re Hoblitzell*, 223 B.R. 211, 215-16 (Bankr.E.D. Cal. 1998), for the proposition that a false statement or omission is material even if it does not cause direct financial prejudice to creditors. Therefore, although not presented as clearly as it could be, it appears that Plaintiff has sufficiently alleged that Defendant made false statements under oath by failing to disclose several assets known to Defendant in his bankruptcy schedules with an intent to deceive creditors and officers of the court. These specific allegations are likely enough to satisfy the heightened pleading requirements for purposes of Rule 9(b).

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E. §727(a)(5)

This section provides: "The court shall grant the debtor a discharge, unless— the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities[.]" Here, Plaintiff's complaint, including the additional detail in the Exhibit, has sufficiently alleged the disappearance of identifiable assets no longer available to creditors, including the funds provided to him by Plaintiff, the (funds available for) purchase and transfer of the oil processing machine, the \$1,000,000 million (per month) in product purchased from Emerald City Cultivation, and other assets Defendant claims to have utilized a portion of these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge.

Defendant does not attempt to explain the loss of these assets, but only points out that the WSLCB report makes no such findings as detailed above. The court notes that the report is lengthy, and the complaint does not make reference to any specific page or paragraph numbers where such information can be easily found. However, in sum, Plaintiff's complaint, which incorporates the WSLCB by reference, does appear to sufficiently allege a cause of action under §727(a)(5), but Plaintiff's complaint could benefit from specific pin cites.

F. §727(a)(6)

The statute provides: "The court shall grant the debtor a discharge,

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unless—the debtor has refused, in the case—

- (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;
- (B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or
- (C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify[.]"

Plaintiff argues that it is undisputed that as stated in the Complaint, in the King County Superior Court litigation, the Honorable Judge McHale entered an Order ordering Defendant-Debtor provide complete responses and documents in response to Mr. Bagot's discovery requests, which were due no later than June 25, 2019, Defendant allegedly failed to comply with this Order. Plaintiff also argues that Defendant did not object on grounds of privilege against self-incrimination or any other ground, Defendant simply refused to comply. Plaintiff asserts that this failure to cooperate resulted in sanctions being imposed, which Defendant apparently has also refused to pay. There is a question whether "the court" as referenced in the statute means the bankruptcy court only, or might it mean another court such as the Kings County Court. But this point is not developed in the papers. Thus, Plaintiff has likely pled sufficient facts to survive the motion to dismiss.

G. §727(a)(7)

This statute provides: "The court shall grant the debtor a discharge, unless—the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing

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of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider[.]"

As discussed above, Plaintiff alleges that Defendant committed the acts in (2), (3), and (6) within 1 year of the petition date. Also as discussed above, Plaintiff's complaint alleges various acts of misconduct during the pendency of the bankruptcy case, including knowingly providing false information in his bankruptcy schedules. Again, the question arises whether the malfeasance in another case must be one under Title 11. But the point is not developed so the pleading seems sufficient.

H. §727(a)(12)

This section states: "The court shall grant the debtor a discharge, unless— the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)."

As Plaintiff argues, the complaint details the fraudulent sale of unregistered securities by Defendant, an unregistered security broker/dealer, in Defendant's alter ego entities including Renewable Technologies Solutions, Inc. and SMRB, LLC (d.b.a. Green Acres Pharms) (and possibly Green Acres Pharms, LLC, from whom the "Distribution" was paid), as well as his improper conduct while acting in a fiduciary capacity with respect to these dealings and entities. Therefore, Plaintiff has sufficiently pled the first element of this claim. With respect to the second element, there must be pending a proceeding in which the debtor may be found guilty of a felony or liable for a debt of the kind

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described in §522(q)(1); Plaintiff's complaint provides sufficient details his pending proceeding against Defendant for, among other things, violating State securities laws and relevant disclosure requirements. Thus, this cause of action is likely sufficient to survive the motion.

I. §523(a)(2)(A)

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any 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[.]" The debtor's intent to deceive may be inferred by circumstantial evidence under the 'totality of the circumstances' test. *In re Eashai*, 87 F.3d 1082, 1087 (9th. Cir. 1996). Under the relevant test, the Court "may infer the existence of the debtor's intent not to pay if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor." *Id.*

As discussed above, the complaint provides ample detail of Defendant's alleged fraudulent misconduct including, allegedly making false statements about his companies' financial situations, matters of ownership, etc. in connection with soliciting investment from Plaintiff. Plaintiff points out that the WSLCB report made several of these findings, all of which are incorporated into the complaint as an exhibit. In sum, there appears to be sufficiently detailed allegations, taken as true, to satisfy the pleading requirements, including those of Rule 9b.

J. §523(a)(4)

This section provides: "A discharge under section 727, 1141, 1192 [1]

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1228(a), 1228(b), or 1328(b) 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[.]”

For purposes of § 523(a)(4), embezzlement is defined as “the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come.” *Moore v. United States*, 160 U.S. 268, 269, 16 S. Ct. 294, 295, (1885). Further, as explained in *Murray v. Woodman (In re Woodman)*, 451 B.R. 31 (Bankr. D.Idaho), “an intent to deprive the rightful owner of funds only temporarily and not permanently [does] not negate the element of [fraudulent] intent.” *Id.* at 43. “To prevail under § 523(a)(4) for larceny, a creditor must prove that “the debtor has wrongfully and with fraudulent intent taken property from its owner. Larceny differs from embezzlement in the fact that the original taking of property was unlawful, and without the consent of the injured person.” *King v. Lough (In re Lough)*, 422 B.R. 727, 735-36 (Bankr. D. Id. 2010). (internal citations omitted)

The complaint appears to allege both embezzlement and larceny while Defendant was acting in a fiduciary capacity. Taking Plaintiff’s allegations as true, Defendant obtained money from Plaintiff which he was required to – on two different occasions – provide directly to SMRB, LLC (d.b.a. Green Acres Pharms). Plaintiff alleges that Defendant not only obtained these funds unlawfully from Plaintiff, Defendant either never provided Plaintiff’s funds to SMRB or improperly removed them and has failed to provide any accounting for these funds or explain their disappearance, without the consent of Plaintiff. Again, taking Plaintiff’s allegations as true, Plaintiff does appear to have pled sufficient facts to survive the motion.

K. §523(a)(6)

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This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title 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[.]" Section 523(a)(6)'s willful injury requirement is met when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002). Plaintiff's complaint is replete with allegations of knowing misconduct, including fraud, breach of contract, breach of fiduciary duty, unjust enrichment, etc. Specifically, Plaintiff alleges that false statements in certain written materials induced Plaintiff to invest Defendant's ventures. Taken as true, the allegations in the complaint are sufficient to satisfy the willfulness portion of the statute.

Courts treat the malicious injury requirement of § 523(a)(6) as separate from the willful requirement. According to *In re Jercich* 238 F.3d 1202, 1209 (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.'" *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002). Plaintiff alleges conduct that, if true, would satisfy the maliciousness portion of the statute. For example, Plaintiff's complaint alleges that Defendant knowingly made material misstatements or omissions the written material provided to Plaintiff, which ultimately allowed Defendant to obtain the hundreds of thousands of dollars from Plaintiff. Plaintiff alleges that Defendant knew that the money acquired from Plaintiff had not gone for the benefit of SMRB or to purchase an oil processing machine, and also knew that significant damage to plaintiff would certainly result if the money could not be returned to Plaintiff. The WSLCB report also concludes on page 9 that it appears that the investors taken in by Defendant (Plaintiff among them) were the victims of a fraudulent "Ponzi Scheme." For these reasons, Plaintiff's complaint has sufficiently stated claim under section 523(a)(6).

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L. Attorney's Fees Under §523(d)

This section states: "If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust." As should be obvious, none of Defendant's debts have been discharged in connection with the section 523(a)(2) claim as we are still at the pleading stages. Thus, this request for attorney's fees by Defendant is premature and is thus denied.

III. Conclusion

The court does not see a failure of subject matter jurisdiction. The court is persuaded Plaintiff's complaint, though it could be made clearer in places by pin citation to the attached WSLCB report and in a few places raise some dubious theories, does appear to have stated enough for relief under every theory alleged. This is not to say that Plaintiff will succeed on every theory alleged, but simply that the basic pleading requirements have been satisfied.

Deny"

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed

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in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and illegal under federal law.

Even though cannabis sale has now been legal in several states for several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of

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unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.' *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue. The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were

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the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not cause mandatory dismissal." *Id.* at *7.

The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate

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the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

Perhaps the better questions are, should only part of the court's jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

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Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Brenda Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01200 Samec et al v. Griffithe

#10.00 Plaintiff's Motion For Temporary Abstention

Docket 35

Tentative Ruling:

Tentative for 3/12/20:

See #7. Same as there, and same as in *Bagot v. Griffithe*.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Brenda Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01202 Wick v. Guy Griffithe

#11.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
[11 usc Section 523 (a)(2)(A) And (a)(4) Case RIC 1821749 Wick vs. Griffthe
Et.Al.
(cont'd from 1-16-20)

Docket 1

Tentative Ruling:

Tentative for 3/12/20:
See #12.

Tentative for 1/16/20:
See #7. The status conference will travel together with dismissal motions.
Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Pro Se

Plaintiff(s):

Gregory Wick

Pro Se

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Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01202 Wick v. Guy Griffithe

#12.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]
(cont'd from 1-16-20)

Docket 3

Tentative Ruling:

Tentative for 3/12/20:

No amendment? Will there be an abstention request similar to the other adversary proceedings?

Tentative for 1/16/20:

This is Defendant/Debtor, Guy Griffithe's ("Defendant's") motion to dismiss the complaint of Plaintiff/Creditor, Gregory Wick (Plaintiff). This tentative ruling was originally written for the *Samec v Griffithe* matter (19-01195) but the *Wick* complaint shares many of the same infirmities. Thus, a separate tentative ruling is unnecessary.

Plaintiff's complaint is styled such that he is essentially requesting a determination that Defendant's conduct, if proven, would constitute non-a dischargeable debt pursuant to 11 U.S.C. §523(a)(2)(A) [actual fraud] and (a) (4) [defalcation while acting in fiduciary capacity, embezzlement or larceny]. It is not clear whether Plaintiff intends to have the case tried in this court or in state court, and there is a question of abstention but not before the court at this moment.

1. FRCP 12(b)(6) Standards

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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 enough 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.*

2. Alleged Facts

Plaintiff in his complaint alleges that, in exchange for a 90-day loan from Plaintiff in the amount of \$100,000, Defendant signed a promissory note on March 30, 2017 on behalf of Bridgegate Picture Corp. ("Bridgegate") and signed also as a personal guarantor. The promissory note was delivered by Plaintiff's then financial advisor, Maartin Rossouw ("Rossouw"). Plaintiff claims that Rossouw acted as a dual agent for both Plaintiff and Defendant. When debt on the promissory note became due, Plaintiff attempted to collect

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through Rossouw, but to no avail. This went on for several months. To date, Plaintiff has received only \$25,000, but apparently received other checks returned for insufficient funds. It is noteworthy what the complaint does not contain. There are few if any alleged representations attributed to the Defendant, or even to Rossouw. In short, very little is given that would separate this case from a simple breach of contract case. It should come as no surprise that all bankruptcies are filled with breach of contract claims, and it is only those few where the debt was procured through one or more of the "bad acts" described in §523(a) that discharge is correctly challenged.

3. Plaintiff's Claim Under §523(a)(2)(A)

Plaintiff claims that Defendant's alleged misconduct requires a finding that the debt he has incurred with respect to the unpaid loan is not dischargeable pursuant to §523(a)(2)(A). To establish a claim under §523(a)(2)(A), a plaintiff must establish: (1) a representation of fact by the debtor; (2) that was material; (3) that the debtor knew at the time to be false; (4) that the debtor made with the intention of deceiving the creditor; (5) upon which the creditor relied; (6) and that the creditor's reliance was reasonable; (7) that damage proximately resulted from the misrepresentation. See *Rubin v. West (In re Rubin)*, 875 F.2d 755, 759 (9th Cir. 1989); see also, *Britton v. Price (In re Britton)*, 950 F.2d 602, 604 (9th Cir. 1991). A claim under this "fraud" exception requires that the claim satisfy the heightened pleading requirements for fraud pursuant to F.R.C.P. 9(b). See *In re Jacobs*, 403 B.R. 565, 574 (Bankr. N. D. Ill. 2009) (citations omitted).

F.R.C.P. 9(b) and F.R.B.P. 7009 provide: "In alleging fraud, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." While intent or knowledge may be averred generally,

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however, the plaintiff must still plead the events claimed to give rise to an inference of intent or knowledge *Devaney v. Chester*, 813 F.2d 566, 568 (2d Cir. 1987), which may be accomplished by pleading facts consistent with certain well established "badges of fraud." *In re Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2004).

Here, Plaintiff in his complaint alleges that at the time of the loan, Defendant knew that Bridgegate was severely undercapitalized and did not have the resources to fulfill the terms of the promissory note or Defendant's personal guarantee. Plaintiff alleges that Defendant has entered into similar agreements with other investors, and that those promissory notes too are in default. Plaintiff alleges that he detrimentally relied on Defendant's personal guarantee of the loan in making his decision and that had he known Bridgegate's true financial condition, he would never have invested. As a result of Defendant's default, which Plaintiff argues was intentional, Plaintiff has been damaged in an amount not less than the remaining balance of the loan.

But, are the facts alleged in Plaintiff's complaint, taken as true, even close to meeting the minimal pleading standards set forth above? No allegation is made that Defendant represented anything to Plaintiff, whether about his own financial position, that of Bridgegate, or otherwise. There is no specific allegation that Rossouw made representations either. As *Iqbal* and *Twombly* make clear, there must be enough *factual* detail to support a claim under §523(a)(2)(A), especially given the heightened pleading standards under Rule 9(b). Merely reciting the elements of fraud is insufficient; there must be corresponding facts alleged supporting each of the elements. What was said, by whom, when, etc. Was it oral or in writing?

Surely, not every promissory note supported by a personal guarantee

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amounts to fraud, false pretenses, or intentional misrepresentation when the promisor and guarantor cannot fulfill those obligations. Even considering the other notes allegedly made to other investors on similar terms, the court remains unpersuaded that fraudulent conduct has been pled with enough specificity for Rule 9. Even shaky borrowers are entitled to borrow money, and eventual default does not necessarily mean this was a foregone conclusion. In opposition to this motion, Plaintiff argues that Defendant has had over 20 lawsuits filed against him for nonpayment of debt going back over a decade. Unfortunately, this was not raised in the actual complaint. Moreover, we cannot rely on mere inference. While widespread and prolonged giving of bad promissory notes *might* suggest that the issuer was making them intentionally without the ability or inclination to repay, all the specifics need to be provided and Plaintiff must be able to allege specifically that these were an intentional device to obtain funds under false pretenses. The Complaint as it stands is very short of this standard.

4. Plaintiff's Claim Under §523(a)(4)

11 U.S.C. § 523(a)(4) provides an exception to discharge "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny[.]"

Here, Plaintiff alleges that Defendant, as President of Bridgegate, owed fiduciary duties to his investors, including Plaintiff. Plaintiff then alleges that Defendant breached those duties by:

- (1) failing to honor the personal guarantee;
- (2) failing to pay the note by the dates set forth in the note;
- (3) failing to pay court costs;
- (4) failing to pay late fees;

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(5) misrepresenting the financial status of the company;

(6) Engaging in criminal activity, which put the company in peril;

(7) Gross mismanagement;

(8) Theft and conversion of company assets;

(9) failure to disclose money to Plaintiff, which he was entitled to receive;

(10) Diverting assets so as to put them beyond the reach of Plaintiff;

(11) Paying himself excessive and/or non-disclosed salaries.

This is quite a list. But unfortunately, like the first claim for relief, this one suffers from the same lack of detailed factual allegations enough to satisfy the heightened pleading requirements under Rule 9(b). The above listed allegations appear to be nothing more than legal conclusions that are either insufficiently supported or not supported at all by the facts as alleged. For example, it is not at all clear how or why Plaintiff regards himself as an "investor" rather than merely a lender. A factual example for each of the 11 subparts would also add some substance to the complaint and possibly supply some support for the necessary allegation that Defendant was as to Plaintiff a fiduciary. Merely being a lender does not alone create a fiduciary relationship. It is also not clear whether Plaintiff is alleging embezzlement and/or larceny in the Complaint. In short, this cause of action is not supported by enough facts to state a claim that is plausible on its face.

The court notes that Plaintiff is proceeding *in pro se* and encourages Plaintiff to retain counsel. The Complaint involves issues that can be quite subtle and more complex than they may seem to a lay person. This is especially true when the opponent is represented by counsel. The court also notes that Plaintiff is a plaintiff, along with his wife, in another adversary proceeding involving some of the same issues. Retaining counsel could be of

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significant benefit to Plaintiff. Thus, since the Ninth Circuit has routinely held that leave to amend should be liberally granted, so it will be in this case. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

5. Jurisdiction Issue

The Reply also curiously argues that the court does not have jurisdiction over this adversary proceeding because the debt at issue was incurred in connection with a cannabis business. The court needs clarification on whether Bridgegate Picture Corp. is a cannabis concern or, as its name would suggest, a motion picture company, or the like. The court is aware that the other adversary proceedings do relate to loans made primarily for investment in a cannabis business, including one adversary proceeding where Mr. Samec is also a Plaintiff (along with his wife), which adds a layer of confusion that requires clarification.

Grant with leave to amend

Status conference travel together with same.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Gregory Wick

Pro Se

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Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:17-13482 Catherine M Haretakis

Chapter 7

Adv#: 8:19-01225 Casey v. Grant et al

#13.00 STATUS CONFERENCE RE: Complaint For: 1) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 548(a)(1)(A); 2) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 548(a)(1)(B); 3) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 544(b) and Cal Civ Code Section 3439.04(a)(1); 4) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 544 and Cal Civ Code Section 3439.04(a)(2); 5) Avoidance of Fraudulent Transfer Pursuant to 11 USC Section 544 and Cal Civ Code Section 3439.05; and 6) Recovery of Fraudulent Transfer Pursuant to 11 USC Section 550 and Cal Civ Code Section 3439.07
(set per another summons issued on 12-23-19)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNARY DISMISSAL WITH PREJUDICE OF ADVERSARY
PROCEEDING FILED 2-21-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

Defendant(s):

Robert B. Grant

Pro Se

Betty L. Lockhart-Grant

Pro Se

Plaintiff(s):

Thomas H. Casey

Represented By
Beth Gaschen

Trustee(s):

Thomas H Casey (TR)

Represented By

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CONT... Catherine M Haretakis

Beth Gaschen

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8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

- #14.00 STATUS CONFERENCE RE: Complaint For:**
- I. Denial Of Discharge Pursuant To 11 U.S.C. Sec. 727(a)(2-7);
 - II. Turnover Of Real Property Pursuant To 11 U.S.C. Section 542;
 - III. Turnover Of Funds Pursuant To 11 U.S.C. Sec. 542 & 543;
 - IV. Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. Sec. 547;
 - V. Avoidance Of A Preferential Transfer Pursuan To 11 U.S.C. Sec. 548;
 - VI. Avoidance Of A Post-Petition Transfer Pursuant To 11 U.S.C. Sec. 549
- (cont'd from 2/27/20 per another summons has been issued on 12-19-19)**

Docket 4

***** VACATED *** REASON: CONTINUED TO 4-09-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO ALLOW DEFENDANTS UNTIL
MARCH 12, 2020 TO FILE A FIRST RESPONDING DOCUMENT AND
TO CONTINUE THE STATUS CONFERENCE ENTERED SET FOR
MARCH 12, 2020 ENTERED 1-10-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Pro Se

Jason Paul Hughes

Pro Se

Betty McCarthy

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By

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CONT... Deborah Jean Hughes

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Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:19-14307 Roadking Trucking, LLC

Chapter 11

**#15.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual LLC
(cont'd from 12-4-19)**

Docket 1

Tentative Ruling:

Tentative for 3/12/20:
Why no status report?

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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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 1-09-20 per order approving joint stip. to cont. pre-trial conf. entered 1-06-20)

Docket 83

***** VACATED *** REASON: CONTINUED TO MARCH 26, 2020 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL CONFERENCE ENTERED 2/28/2020**

Tentative Ruling:

Tentative for 11/14/19:

If no appearance, issue OSC re: dismissal for lack of prosecution.

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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CONT... Stacey Lynn Schmidt

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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.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

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CONT... Stacey Lynn Schmidt

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Defendant(s):

Stacey Lynn Schmidt Pro Se

Plaintiff(s):

Tracy M Marx Pro Se

Trustee(s):

Karen S Naylor (TR) Pro Se

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10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#17.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Based On Fraud And Objecting To Discharge Of Debtors (set from s/c held on 9-12-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-28-20 AT 10:00 A.M.
PER ORDER RE: STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE HEARING ENTERED 12-05-19**

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.

Tentative for 6/6/19:
See # 23 & 24 - Motions to Dismiss

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

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

Thursday, March 12, 2020

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

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, March 12, 2020

Hearing Room 5B

10:00 AM

8:12-17406 Matthew Charles Crowley

Chapter 7

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

#18.00 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8) (con't from 1-9-20 per order on stip. to continue entered 8-19-19)

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 14, 2020 AT 10:00 A.M. PER ORDER ENTERED 1/8/20**

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
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Thursday, March 12, 2020

Hearing Room

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11:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

#19.00 Motion For Order: (1) Bifurcating Trial Concerning The Transfer of The Las Brisas Property; (2) Modifying The Court's Scheduling Order

Docket 136

Tentative Ruling:

Tentative for 3/12/20:

This is the Chapter 7 Trustee ("Trustee's") motion to bifurcate the trial concerning the transfer of the property located at 28192 Las Brisas Del Mar, San Juan Capistrano, CA 92675 ("the Property") from debtor, Luminance Health Group, Inc. ("Debtor") to Defendant Michael Castanon ("Castanon") to, among other things, establish certain critical dates. The motion has drawn opposition from Castanon, and a separate conditional opposition from Defendants, BeachPointe Investments, Inc., Bawuah, Jerry Bolnick, Joseph Bolnick, Jonathan Blau, Kenneth Miller, Peter Van Petten, Raymond Midley, and Veronica Marfori (collectively "other Defendants").

Federal Rule of Civil Procedure ("FRCP") 42(b) provides that "the court may order a separate trial of one or more separate issues, claims..." for "convenience, to avoid prejudice, or to expedite and economize[.]" "A court might bifurcate a trial to 'avoid[] a difficult question by first dealing with an easier, dispositive issue[.]'" *Estate of Diaz v. City of Anaheim*, 840 F.3d 592, 601 (9th Cir. 2016) citing *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001). Other courts have considered the following: (1) whether issues sought to be tried separately are significantly different from one another, (2) whether separable issues require testimony of different witnesses and different documentary proof, (3) whether party opposing the severance will be prejudiced if it is granted, and (4) whether party requesting severance will be prejudiced if it is not granted. *Cashman v. Montefiore Medical Center*, 191 B.R. 558 (S.D.N.Y.1996).

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CONT...

Luminance Recovery Center, LLC

Chapter 7

Trustee urges the court to bifurcate the trial or else the estate will suffer prejudice because, although Castanon is still residing at the Property, he is not making the monthly mortgage payments and the mortgage has since gone into default. Thus, Trustee argues, with each passing month, the estate's equity in the Property is eroding. The Trustee seeks to avoid the transfer of the Property as an intentional fraudulent transfer, a constructively fraudulent transfer, and a preferential transfer. These causes of action implicate issues other than insolvency and involve only Castanon. Therefore, Trustee believes that a bifurcated trial is in the best interests of the estate because the trial regarding the transfer of the Property will be focused on one defendant, Castanon, and the single transfer at a particular point in time, January 27, 2018, a mere two months before the Debtors ceased operations and filed bankruptcy petitions. As added efficiency, Trustee notes that the parties have already briefed many of the issues concerning the Las Brisas Property in connection with the Trustee's motion for partial summary judgment.

Castanon opposes the motion because he believes that Trustee is not acting for the benefit of the estate, but simply trying to divide the defendants to place more pressure on Castanon. Castanon also asserts that there will be significant duplication of efforts, including repeated witnesses being called to testify about the same evidence. For example, Castanon asserts that both phases of the bifurcated trial would require the same witness, Debtor's former CEO Anthony Arnaudy, to appear and testify about financial reports, accounts receivable, purchase agreements, etc. that will be the same in both phases. As a result of bifurcation, Castanon asserts that he will be prejudiced by having to pay for two separate trials at great cost. Other Defendants do not oppose the motion to the extent that the first part of the bifurcated trial will address only the issue of solvency as of January 2018, the date of the transfer of the Property. However, Defendants oppose the motion if Trustee intends for the bifurcated trial to address solvency issues for earlier time periods relevant to the Trustee's claims against Defendants (that is, from

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Chapter 7

2016 through December 2017). If that occurs, Defendants argue, the bifurcated trial will necessarily involve duplicative litigation and will not be an efficient use of resources because Defendants will have to participate to protect their rights, and then still go through a second trial on other issues unique to Other Defendants.

Trustee insists that there will be no duplication on the issue of insolvency. Even though both phases of the bifurcated trial will involve the issue, insolvency will relate to different pinpoints in time. Trustee asserts that the difference in the time periods will impact the information, facts and circumstances, witnesses, and evidence considered by the court and the analyses of insolvency. Bifurcation, Trustee asserts, will simply take what will already be a multi-day trial and break it into two distinct phases. Trustee concludes that by allowing the parties and the court to focus on particular issues among the relevant parties in each phase, overall, bifurcation will be more efficient and economical.

This trial should be bifurcated. Using the elements cited by Castanon, it appears that the issues in the two proposed phases of the trial would be significantly different. Contrary to Castanon's assertion, Debtor's insolvency is not the only issue to be litigated in this trial. Trustee is not only alleging that the transfer of the Property to Castanon was constructively fraudulent (and preferential), it was also *actually* fraudulent, which means issues of intent, among possibly others, will be implicated. These issues will be unique to Trustee's claims against Castanon. To that end, it is likely that the evidence and witness testimony will not necessarily be duplicative as the issues are sufficiently distinct. To the extent that both phases involve issues of insolvency, Castanon concedes that the issue of insolvency will come up in different time periods, and thus, different contexts that will not have significant overlap. For these reasons, it is likely that little, if any, prejudice will accrue to Castanon if the trial is bifurcated. By contrast, the court is persuaded that not bifurcating the trial will prejudice Trustee. The court is troubled by Castanon's failure to pay the mortgage on the Property he accepted and for which he

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CONT... Luminance Recovery Center, LLC Chapter 7

took responsibility. Castanon does not dispute that he has failed to pay the monthly mortgage and that the mortgage is now in default, which is eroding the equity Debtor had built. As this is undisputed, the balance of prejudice favors granting Trustee's motion. By doing so, Trustee will obtain a judgment on his claims against Castanon without having to wait for adjudication on the balance of the case. This conclusion is bolstered by Defendants limited opposition.

Trustee also requests a modification in the scheduling order. Trustee suggests that the parties continue to abide by the dates already set by the court in its Scheduling Order (Doc. 123):

1. The pre-trial conference is set for May 7, 2020 at 10:00 a.m.;
2. The joint pre-trial stipulation must be submitted on April 23, 2020, per Local Bankruptcy Rule 7016-1(b)(1)(B);
3. The discovery cutoff date is March 30, 2020; and
4. The motion cutoff date is April 17, 2020 (including all discovery motions).

In addition, the Trustee proposes that the court set the following dates related to the identification of experts and discovery related thereto: (1) the parties shall designate their expert(s) and serve by email the expert's report to counsel by no later than April 15, 2020; (2) each party shall make their designated expert(s) available to any party for deposition during the twenty-one (21) days following designation of their expert witness(es); and (3) the report of any rebuttal expert(s) must be submitted thirty (30) days after expert designations pursuant to Rule 26(a)(2)(D)(ii). The Trustee proposes that the trial on the Trustee's claims to avoid and recover the Las Brisas Property and the value related thereto be set in late May or early June 2020. The court will

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CONT... Luminance Recovery Center, LLC

Chapter 7

hear further from Castanon and Other Defendants on those particulars.

Grant bifurcation. No tentative on amendments of scheduling order.

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

Kenneth Miller

Represented By
Evan C Borges

Peter Van Petten

Represented By
Evan C Borges

Raymond Midley

Represented By
Evan C Borges

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CONT... Luminance Recovery Center, LLC

Chapter 7

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
M Douglas Flahaut

**United States Bankruptcy Court
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Thursday, March 12, 2020

Hearing Room 5B

11:00 AM

8:19-13493 Ralph Maxwell Burnett, III

Chapter 11

Adv#: 8:19-01230 Ross v. Burnett, III et al

#20.00 Defendants' Motion To Dismiss Plaintiff Richard Ross' First Amended Complaint To Determine Dischargeability Of Debts Under Sections 523(A)(2) And 523(A)(6) Of The Bankruptcy Code

Docket 15

Tentative Ruling:

Tentative for 3/12/20:

This is Defendants/Debtors, Ralph and Shelley Burnett's ("Defendants" or "Debtors") motion to dismiss Plaintiff, Richard Ross' ("Plaintiff's") first amended complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff opposes the motion.

1. Brief Factual and Procedural Background

Debtors were the owners of the real property located in the City of Santa Ana, County of Orange, State of California, commonly known as 13341 Sandhurst Place ("Property"). On or about July 2, 2019, Plaintiff entered into an agreement for the purchase and sale of the Property and executed Escrow Instructions ("Escrow Instructions") with the Debtors in which the Debtors agreed to sell and Plaintiff agreed to buy the Property for the sum of \$950,000, including a down payment of \$190,000, and financing in the amount of \$760,000. Debtors were in dire financial straits at the time of the agreement and facing foreclosure. The agreement would allow Debtors to stay on the property while paying fair market rent to Plaintiff.

Plaintiff deposited \$10,000 into escrow account number 5870190794 with Chicago Title Company as an earnest money deposit towards the purchase price. The Escrow Instructions provided that escrow was to close by August 15, 2019. At the time of the execution of the Escrow Instructions, the

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CONT...

Ralph Maxwell Burnett, III

Chapter 11

Property had a reasonable value of \$1,229,000, as evidenced by the asking price indicated on a recent listing for the Property on the Multiple Listing Services. Plaintiff experienced a delay in obtaining financing, and requested an extension from the Debtors to September 3, 2019, to which the Debtors agreed. Plaintiff's lender cleared the purchase price for closing on August 26, 2019. On August 29, 2019 Plaintiff was informed by the escrow agent that the Debtors refused to sign the documentation for the extension, preventing the closing of the transaction.

Defendants filed their voluntary chapter 11 petition on September 9, 2019. On or about December 10, 2019, Plaintiff Richard Ross ("Plaintiff") filed an adversary complaint to determine dischargeability of debt under 11 U.S.C. § 523(a)(2) and 11 U.S.C. § 523(a)(6) of the Bankruptcy Code. This complaint was dismissed pursuant to a motion brought under Rule 12(b)(6), but the Court did give the Plaintiff leave to amend. On or about January 9, 2020, Plaintiff filed a First Amended Complaint (the "First Amended Complaint").

2. Motion to Dismiss 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

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CONT... **Ralph Maxwell Burnett, III**

Chapter 11

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*, _ U.S._, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.* Threadbare recitals of elements supported by conclusory statements is not sufficient. *Id.*

3. Plaintiff's §523(a)(2)(A) Claim

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any 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[.]" Plaintiff's First Amended Complaint must allege (1) the debtor made the representations; (2) at the time he knew they were false; (3) he made them with the intention and purpose of deceiving the creditor; (4) the creditor relied on such representations; and (5) the creditor sustained the alleged loss and damage as the proximate result of the representations have been made, *In re Britton*, 950 F. 2d 602, 604 (9th Cir. 1991).

Plaintiff argues that the First Amended Complaint adequately pleads

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CONT... **Ralph Maxwell Burnett, III**

Chapter 11

facts sufficient to survive the motion. Specifically, Plaintiff's First Amended Complaint alleges on page 5, ¶¶21 the following:

- "a) Debtors continually represented to Plaintiff their intent to complete the sale of the Property to the Plaintiff;
- b) Despite Debtors' representation that they would perform their contractual obligations to sell the Property to the Plaintiff, all such representations were knowingly false;
- c) Debtors' knowingly false representations to Plaintiff that they would complete the sale of the Property was in fact a material aspect of the contractual relationship between the Plaintiff and Debtors;
- d) Plaintiff alleges that at all times the Debtors were completely aware and fully knew they did not intend to complete the sale of the Property to the Plaintiff;
- e) Plaintiff alleges that it was clearly the Debtors' knowing intent that Plaintiff would rely on Debtors' knowingly false and repeated representations yet they in fact had no intention to complete the sale of the Property to Plaintiff; and
- f) Plaintiff suffered damages in an amount no less than \$400,000 due to Debtors' initial and ongoing knowing fraudulent conduct concerning the purported sale of the Property to Plaintiff."

Defendant argues that these are merely threadbare recitals of the required elements, but, without more, fail to satisfy the *Twombly/Iqbal* standard. Defendants also note that the allegations quoted above are insufficient to satisfy the heightened pleading requirements under Rule 9(b).

The court disagrees. Although the First Amended Complaint is somewhat thin, there is enough detail to allow both Defendants and the court to understand what the allegations are and the basis for those allegations. To

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Chapter 11

be clear, this does not mean that Plaintiff will necessarily succeed on any of these claims, but they have met the minimal plausibility standards. Likewise, Plaintiff's First Amended Complaint includes just enough specificity to satisfy the heightened pleading requirements of Rule 9(b). Defendants attempt to argue issues of plausibility ("why would defendants do this..."), perhaps inspired by language from *Twombly/Iqbal*. While it is true that the complaint must recite facts from which a court can see a path to liability, that is done here. Whether it can be sustained by evidence is another matter. But even after *Twombly/Iqbal* it is not the province of Rule 12 motions to determine disputed facts, so long as they rise above a very minimal level of plausibility.

4. 11 U.S.C. §523(a)(6)

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title 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[.]" "[A] simple breach of contract is not the type of injury addressed by § 523(a)(6)... an intentional breach of contract is excepted from discharge under § 523(a)(6) only when it is accompanied by malicious and willful tortious conduct." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1205 (9th Cir. 2001) (internal quotations omitted). "[A] wrongful act that is voluntarily committed with knowledge that the act is wrongful and will necessarily cause injury meets the 'willful and malicious' standard of § 523(a)(6). Similarly, the Restatement definition of intent... requires the actor either to desire the consequences of an act or to know the consequences are substantially certain to result. Under this definition, the actor's deliberate act with knowledge that the act is substantially certain to cause injury is sufficient to establish willful intent." *Id.* at 1208.

Plaintiff again points to the above quoted portion of the First Amended Complaint and argues that the willfulness and maliciousness have been adequately pled. Again, Plaintiff's complaint is light on detail, but is enough to survive this motion. The court notes that exactly how Plaintiff knows that

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CONT... **Ralph Maxwell Burnett, III**

Chapter 11

Defendants intended to deceive and economically harm him is left somewhat vague. As far as the court can tell, Plaintiff alleges that because Defendants had gone so far toward completing the sale only to back out at the last minute, the inescapable inference is that Defendants intentionally deceived Plaintiff and intended to harm him economically in the amount of no less than \$400,000. The court is skeptical that such an inference is wholly warranted by the facts as pleaded; the court also wonders what Defendants stood to gain by going so far toward an agreed sale that was designed to keep them in their residence only to pull out at the last moment. Not every breach of contract is a tort. Nevertheless, at this early stage, the court is obliged to take all factual allegations as true and view the allegations in the light most favorable to Plaintiff as the nonmoving party. And while plausibility is obviously stretched the court cannot say at this juncture (where the threshold is very low) it is altogether lacking. Therefore, Plaintiff's complaint just barely satisfies the pleading standards.

Deny

Party Information

Debtor(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones

Shelley Lynn Burnett

Represented By
Michael Jones

Joint Debtor(s):

Shelley Lynn Burnett

Represented By
Michael Jones

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CONT... Ralph Maxwell Burnett, III

Chapter 11

Sara Tidd

Plaintiff(s):

Richard Ross

Represented By
Thomas J Polis

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Monday, March 16, 2020

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

**#1.00 TRIAL 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 p/c hrg held on 12-19--19)
(re-scheduled from 2-20-20 per court's own mtn)**

Docket 1

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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Tuesday, March 17, 2020

Hearing Room 5B

10:00 AM

8:20-10470 Virginia Vargas

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

WILANN M. KORTH
Vs.
DEBTOR

Docket 7

Tentative Ruling:

Tentative for 3/17/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Virginia Vargas Pro Se

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
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Tuesday, March 17, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICREDIT FINANCIAL SERVICES, INC.
Vs.
DEBTOR

Docket 62

Tentative Ruling:

Tentative for 3/17/20:

Grant unless APO. The opposition fails to show how this collateral is necessary to a reorganization, or that the reorganization represented by the exhibit is "in prospect." This is Debtor's burden. On the other hand, an APO for a period pending confirmation would suffice. Is such an agreement to adequate protection imminent?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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10:00 AM

8:19-14393 Francis J. Dopp

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

VW CREDIT, INC
Vs.
DEBTOR

Docket 21

Tentative Ruling:

Tentative for 3/17/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Francis J. Dopp Jr

Represented By
Mark D Klein

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, March 17, 2020

Hearing Room 5B

10:00 AM

8:19-14808 Ali Salman

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TD AUTO FINANCE, LLC
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 3/17/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Ali Salman

Represented By
Amanda G Billyard

Trustee(s):

Karen S Naylor (TR)

Pro Se

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Tuesday, March 17, 2020

Hearing Room 5B

10:00 AM

8:20-10298 Closure Corporation

Chapter 7

#5.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FORD MOTOR CREDIT COMPANY, LLC
Vs.
DEBTOR

Docket 4

Tentative Ruling:

Tentative for 3/17/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Closure Corporation

Represented By
Mark A Pahor

Movant(s):

Ford Motor Credit Company LLC

Represented By
John H Kim

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 17, 2020

Hearing Room 5B

10:00 AM

8:20-10299 Karen Matchniff

Chapter 7

#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FORD MOTOR CREDIT COMPANY,LLC
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 3/17/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Karen Matchniff

Represented By
Mark A Pahor

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, March 17, 2020

Hearing Room 5B

10:00 AM

8:19-13285 Robert Igor Gaul

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSHCE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 51

***** VACATED *** REASON: OFF CALENDAR; ORDER AND NOTICE
OF DISMISSAL ENTERED 2/21/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Igor Gaul

Represented By
William R Cumming

Movant(s):

Deutsche Bank National Trust

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, March 17, 2020

Hearing Room 5B

10:00 AM

8:16-11969 Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

#8.00 Motion For Adequate Protection Or In The Alternative, Relief from Automatic Stay

JPMORGAN CHASE BANK
Vs.
DEBTORS

Docket 86

***** VACATED *** REASON: CONTINUED TO APRIL 28, 2020 AT 10:30
A.M., PER STIPULATION ORDER ENTERED 3-16-20.**

Tentative Ruling:

Tentative for 3/17/20:

This is the motion for relief of stay brought by JP Morgan Chase Bank. It is alternatively characterized as a request for adequate protection. The debtors are almost 4 years into their five-year plan. But for reasons never explained in the papers, the debtors have not paid property taxes on the subject property commonly known as 16317 Filbert Street, Fountain Valley, CA. for either 2018 or 2019. With penalties and fees according to the bank this is now a \$5942.16 obligation and climbing owed to the County. Both sides at various points characterize the question solely as one of "adequate protection." From this premise debtors argue that the bank can't complain since it is in first position securing about \$245,000 on a property worth, according to debtor, \$650,000. So, as the argument goes, the debtors could continue not paying their property taxes for several years to come and still not threaten, at least mathematically, to put the bank into an unsecured position even though by statute all liens are junior to County taxes. So, one supposes, under this argument the bank must simply lump it?

The court suggests many of the premises behind these arguments are wrong or wrong-headed. First, 11 U.S.C. §362(d)(1) provides relief of stay "for cause *including lack of adequate protection...*" In other words, "cause"

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

Tuesday, March 17, 2020

Hearing Room

5B

10:00 AM

CONT... Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

can be based on things other than a narrow calculation of whether the complaining creditor is adequately protected. "Cause" can also go the behavior of the debtors including issues of bad faith. The court presumes that there is a covenant in the trust deed requiring the debtors to keep current on property taxes. The court also presumes that the confirmed plan required that debtors perform ongoing obligations under the deed of trust without modification. So, what we have in effect are both breaches of those covenants and *post-petition plan defaults*. That is consequently very much a "cause" question, and the possibly lackadaisical tone emanating from debtors on this point is very concerning. It should be well-known by now that this court takes a very dim view of post-confirmation plan defaults. Moreover, relief of stay on account of a Chapter 13 plan default may just the sort of situation for which the deliberately broad and flexible "for cause" provision was designed. See *In re Carona*, 254 B.R. 364, 367 (Bankr. S.D. Tex. 2000).

Of course, the court would prefer debtors complete their plan and keep their home. A large step in that direction, however, will have to be an attitude adjustment and recognition that remedial steps must be taken immediately as that goal is in some jeopardy. The court will hear argument on the points raised.

No tentative

Party Information

Debtor(s):

Christopher E. Meyer

Represented By
Joseph A Weber

Joint Debtor(s):

Rebecca Shoda-Meyer

Represented By
Joseph A Weber

Movant(s):

JPMORGAN CHASE BANK,

Represented By

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

Tuesday, March 17, 2020

Hearing Room 5B

10:00 AM

**CONT... Christopher E. Meyer and Rebecca Shoda-Meyer
Caryn Barron
Nancy L Lee**

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 17, 2020

Hearing Room 5B

10:00 AM

8:19-14129 Raed G. J. Mustafa

Chapter 13

#9.00 Amended Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM:

BASEL HASSOUNEH
Vs.
DEBTOR

Docket 27

Tentative Ruling:

Tentative for 3/17/20:
Grant. Recovery confined to insurance.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Raed G. J. Mustafa

Represented By
Julie J Villalobos

Movant(s):

Basel Hassouneh

Represented By
Jennifer R Schinke

Trustee(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 17, 2020

Hearing Room 5B

10:00 AM

CONT... Raed G. J. Mustafa

Chapter 13

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-13139 Brian Leach

Chapter 13

#1.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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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.

Party Information

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

CONT... Brian Leach

Chapter 13

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, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-13427 Daniel Patrick Pinto and Jessica D Pinto

Chapter 13

#2.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

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Tentative for 11/20/19:

The trustee's objections are well-taken and must be addressed before confirmation can occur.

Party Information

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

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

CONT... Daniel Patrick Pinto and Jessica D Pinto

Chapter 13

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, March 18, 2020

Hearing Room

5B

1:30 PM

8:19-13886 Gary C. Macrides

Chapter 13

#3.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 0

Tentative Ruling:

Tentative for 3/18/20:

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Party Information

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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:19-13917 Hector Aguiluz Pineda

Chapter 13

#4.00 Confirmation of Chapter 13 Plan

Docket 24

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Hector Aguiluz Pineda

Represented By
Christopher J Langley

Movant(s):

Hector Aguiluz Pineda

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 18, 2020

Hearing Room 5B

1:30 PM

8:19-13931 Cesar Larios and Trudy Rosa Larios

Chapter 13

#5.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

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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, March 18, 2020

Hearing Room 5B

1:30 PM

CONT... Cesar Larios and Trudy Rosa Larios

Chapter 13

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-14430 John Zubko

Chapter 13

#5.10 Confirmation Of Chapter 13 Plan

Docket 10

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

John Zubko

Represented By
Peter Recchia

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-14486 Rosalie A Dufrenne

Chapter 13

#6.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

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Party Information

Debtor(s):

Rosalie A Dufrenne

Represented By
Kevin Tang

Movant(s):

Rosalie A Dufrenne

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-14502 Andy T. Torres

Chapter 13

#6.10 Confirmation of Chapter 13 Plan
(con't from 2-19-2020)

Docket 23

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Movant(s):

Andy T. Torres

Represented By
Richard G Heston
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, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

#7.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 0

***** VACATED *** REASON: CONTINUED TO 4-15-20 AT 1:30 P.M.,
PER STIPULATION ORDER ENTERED 3-11-20.**

Tentative Ruling:

Tentative for 2/19/20:

Status on missing payments, 341(a) business budget, etc.?

Party Information

Debtor(s):

Ashley Dawn Conrad

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 18, 2020

Hearing Room 5B

1:30 PM

8:19-14613 Alan G. Gonzalez

Chapter 13

#8.00 Confirmation of Chapter 13 Plan
(re-scheduled from 2-19-20)

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Alan G. Gonzalez

Represented By
Raymond J Seo

Movant(s):

Alan G. Gonzalez

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, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-14634 Trinna Mong Trinh Nguyen

Chapter 13

**#9.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)**

Docket 5

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Tentative for 2/19/20:
Status of delinquencies, mortgage and tax statements, etc.?

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen Pro Se

Movant(s):

Trinna Mong Trinh 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 18, 2020

Hearing Room 5B

1:30 PM

8:19-14724 Jeffrey Lowry

Chapter 13

#10.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

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Party Information

Debtor(s):

Jeffrey Lowry

Represented By
Michael D Franco

Movant(s):

Jeffrey Lowry

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 18, 2020

Hearing Room 5B

1:30 PM

8:19-14744 Adam Dennis Fay

Chapter 13

#11.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 11

Tentative Ruling:

Tentative for 3/18/20:

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Party Information

Debtor(s):

Adam Dennis Fay

Represented By
Christopher J Langley

Movant(s):

Adam Dennis Fay

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 18, 2020

Hearing Room 5B

1:30 PM

8:19-14756 Carolann McGough

Chapter 13

#12.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 14

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Tentative for 2/19/20:
Status of business questionnaire and procuring plan treatment on JP Morgan Chase?

Party Information

Debtor(s):

Carolann McGough

Represented By
William G Cort

Movant(s):

Carolann McGough

Represented By
William G Cort

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-14802 Christi McGowan and Matthew McGowan

Chapter 13

#13.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)

Docket 13

Tentative Ruling:

Tentative for 3/18/20:

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Party Information

Debtor(s):

Christi McGowan

Represented By
Gary Polston

Joint Debtor(s):

Matthew McGowan

Represented By
Gary Polston

Movant(s):

Christi McGowan

Represented By
Gary Polston
Gary Polston
Gary Polston

Matthew McGowan

Represented By
Gary Polston

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

CONT... Christi McGowan and Matthew McGowan

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 18, 2020

Hearing Room 5B

1:30 PM

8:19-14877 Martha Esthela Valdez

Chapter 13

#14.00 Confirmation of First Amended Chapter 13 Plan

Docket 12

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Martha Esthela Valdez

Represented By
Raymond Perez

Movant(s):

Martha Esthela Valdez

Represented By
Raymond Perez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:19-14941 LeAnn Michelle Gause and Tiffany Denise Gause

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Docket 16

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

LeAnn Michelle Gause

Represented By
Christopher J Langley

Joint Debtor(s):

Tiffany Denise Gause

Represented By
Christopher J Langley

Movant(s):

LeAnn Michelle Gause

Represented By
Christopher J Langley

Tiffany Denise Gause

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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:19-14953 Sara Moghaddam

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Sara Moghaddam

Represented By
Christopher J Langley

Movant(s):

Sara Moghaddam

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 18, 2020

Hearing Room 5B

1:30 PM

8:19-14972 Javier Del Rio

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Javier Del Rio

Represented By
Andy C Warshaw

Movant(s):

Javier Del Rio

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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:19-14992 Chris Tavares Salazar and Dolores Ann Tavares

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Chris Tavares Salazar

Represented By
Jonathan D Doan

Joint Debtor(s):

Dolores Ann Tavares

Represented By
Jonathan D Doan

Movant(s):

Chris Tavares Salazar

Represented By
Jonathan D Doan
Jonathan D Doan

Dolores Ann Tavares

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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

CONT... Chris Tavares Salazar and Dolores Ann Tavares

Chapter 13

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

Wednesday, March 18, 2020

Hearing Room 5B

1:30 PM

8:19-15004 Ghadi Aboulhosn

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Ghadi Aboulhosn

Represented By
Andrew Moher

Movant(s):

Ghadi Aboulhosn

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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:20-10008 Kennedy Clement Anyama

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Kennedy Clement Anyama

Represented By
Onyinye N Anyama

Movant(s):

Kennedy Clement Anyama

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, March 18, 2020

Hearing Room 5B

1:30 PM

8:20-10009 Jay Escano and Annie Escano

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Trustee's points are well-taken. Deny, absent explanation.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Jay Escano

Represented By
Gary S Saunders

Joint Debtor(s):

Annie Escano

Represented By
Gary S Saunders

Movant(s):

Jay Escano

Represented By
Gary S Saunders

Annie Escano

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 18, 2020

Hearing Room 5B

1:30 PM

CONT... Jay Escano and Annie Escano

Chapter 13

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:20-10016 Michael Gregg Beason

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 11

Tentative Ruling:

Tentative for 3/18/20:
Deny confirmation. Dismiss under section 109(g).

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Michael Gregg Beason	Pro Se
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Movant(s):

Michael Gregg Beason	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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:20-10022 Gerardo Grella

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 1-21-20**

Tentative Ruling:

- NONE LISTED -

Party Information

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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:20-10026 Patricia A Gallegos

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

Docket 6

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Patricia A Gallegos

Represented By
Kaveh Ardalan

Movant(s):

Patricia A Gallegos

Represented By
Kaveh Ardalan

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

Docket 14

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

Aureliano Gonzalez

Represented By
Elena Steers

Juana Artega De Gonzalez

Represented By
Elena Steers
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 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

CONT... Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:20-10050 Dat Ngo

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 1-27-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dat Ngo

Represented By
Anthony P Cara

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, March 18, 2020

Hearing Room 1675

1:30 PM

8:20-10153 Keri L Doumani

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Keri L Doumani

Represented By
Kevin Tang

Movant(s):

Keri L Doumani

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room

5B

3:00 PM

8:15-11274 Michael Kevin Fountain and Wendy L. Christensen

Chapter 13

#28.00 Trustee's Motion To Dismiss Case Failure To Complete The Plan Within Its Terms.
(cont'd from 2-19-20)

Docket 77

Tentative Ruling:

Tentative for 3/18/20:
Continue to April 15, 2020 @ 3:00PM.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Grant unless both current on existing plan payments and motion to modify is on file sufficient to account for how the \$34,300 needed will be met.

Party Information

Debtor(s):

Michael Kevin Fountain

Represented By
Richard G Heston

Joint Debtor(s):

Wendy L. Christensen Fountain

Represented By
Richard G Heston

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

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

CONT... Michael Kevin Fountain and Wendy L. Christensen

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 18, 2020

Hearing Room 5B

3:00 PM

8:15-11391 Jill M. Engelmann

Chapter 13

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

Docket 56

***** 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 -

Party Information

Debtor(s):

Jill M. Engelmann

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:15-13362 Daniel F. Cordier

Chapter 13

#30.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision

Docket 44

Tentative Ruling:

Tentative for 3/18/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Daniel F. Cordier

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:15-13438 Salvador Manuel Robledo

Chapter 13

#31.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding

Docket 113

Tentative Ruling:

Tentative for 3/18/20:

Grant absent explanation or modification motion on file if otherwise current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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 18, 2020

Hearing Room 5B

3:00 PM

8:15-13699 Felesia Dailey

Chapter 13

#32.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding

Docket 107

Tentative Ruling:

Tentative for 3/18/20:

Grant absent explanation or modification motion on file, assuming payments are current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Felesia Dailey

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:15-13752 Laura Diaz

Chapter 13

#33.00 Chapter 13 Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision

Docket 63

Tentative Ruling:

Tentative for 3/18/20:
Grant unless current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Laura Diaz

Represented By
Rebecca Tomilowitz

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:17-11618 Oren S. Rapaport

Chapter 13

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

Docket 60

Tentative Ruling:

Tentative for 3/18/20:
Grant unless current or motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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 18, 2020

Hearing Room 5B

3:00 PM

8:17-12260 **Martin Garcia and Desiree Marie Garcia**

Chapter 13

#35.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 1-15-20)

Docket 40

Tentative Ruling:

Tentative for 3/18/20:
Status? Is debtor current or not?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Tentative for 1/15/20:
Is the debtor current, or not? See #37.

Tentative for 12/18/19:
Grant.

Tentative for 11/20/19:
Same.

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

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

CONT... Martin Garcia and Desiree Marie Garcia

Chapter 13

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:17-14634 Kirk P Howland

Chapter 13

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

Docket 87

Tentative Ruling:

Tentative for 3/18/20:
Grant unless current or motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

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**

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-10860 Jose Navarro

Chapter 13

#37.00 Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c) for failure to make plan payments.

Docket 86

Tentative Ruling:

Tentative for 3/18/20:
Grant unless current or modification motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

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 18, 2020

Hearing Room 5B

3:00 PM

8:18-11025 Paolo Cardinali

Chapter 13

#38.00 Trustee's Motion to Dismiss Case

Docket 42

Tentative Ruling:

Tentative for 3/18/20:
Grant absent explanation.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(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**

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-11474 Brian G. Corntassel

Chapter 13

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

Docket 61

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 3-16-20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian G. Corntassel

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-13480 Manuel Florence

Chapter 13

#40.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 2-19-20)

Docket 106

Tentative Ruling:

Tentative for 3/18/20:
See #41.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Continue to allow for processing of motion to modify filed 2/6/20.

Party Information

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-13480 Manuel Florence

Chapter 13

#41.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 122

Tentative Ruling:

Tentative for 3/18/20:

The court cannot reconcile the Trustee's comments about amounts overdue with the Debtor's declaration.

Moreover, the tactic of deliberately defaulting under a plan so as to accumulate funds, and then "asking forgiveness instead of permission" is dubious.

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

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, March 18, 2020

Hearing Room **5B**

3:00 PM

8:18-13646 Denyse Marie Kielb

Chapter 13

#42.00 Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c))
(cont'd from 2-19-20)

Docket 59

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
TRUSTEE'S MOTION FOR ORDER DISMISS CHAPTER 13 (11 U.S.C. -
1307(C)) FILED 3/11/2020**

Tentative Ruling:

Tentative for 2/19/20:
Grant unless current.

Party Information

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-14064 Sean Patrick Lohr and Veronica Lohr

Chapter 13

#43.00 Verified Motion For Order Dismissing Chapter 13 Proceeding
(11 U.S.C. Section 1307(c)) for failure to make plan payments

Docket 43

***** VACATED *** REASON: NOTICE OF WITHDRAWAL OF
TRUSTEE'S MOTION FOR ORDER DISMISS CHAPTER 13 (11 U.S.C. -
1307(C)) FILED 3/11/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sean Patrick Lohr

Represented By
Christopher J Langley

Joint Debtor(s):

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

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

Docket 61

***** 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 -

Party Information

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#45.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c)) (failure to make plan payments)
(cont'd from 2-19-20)

Docket 32

Tentative Ruling:

Tentative for 3/18/20:
Same, status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Same.

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Annelize Ladage

Represented By
Michael D Franco

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

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

CONT... Annelize Ladage

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 18, 2020

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

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

Docket 45

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 2-05-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(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, March 18, 2020

Hearing Room 5B

3:00 PM

8:19-12629 Eduardo Meza

Chapter 13

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

Docket 66

Tentative Ruling:

Tentative for 3/18/20:
Grant unless current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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
Courtroom 5B Calendar**

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

8:15-13436 Paul H. Eggington and Vanda L. Eggington

Chapter 13

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

Docket 56

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL FILED 3-16-20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul H. Eggington

Represented By
James D. Hornbuckle

Joint Debtor(s):

Vanda L. Eggington

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:16-14322 Gregory Paul Fuller and Denise Ann Patton

Chapter 13

#49.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan or Suspend Plan Payments

Docket 70

Tentative Ruling:

Tentative for 3/18/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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)

Represented By
Martha Villanueva

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

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

#50.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 63

Tentative Ruling:

Tentative for 3/18/20:

Deny, as motion is not adequately supported and Trustee's opposition points are both well-taken and un rebutted.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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**

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

8:19-13427 Daniel Patrick Pinto and Jessica D Pinto

Chapter 13

#51.00 Motion For Order Determining Value of Collateral

Docket 38

Tentative Ruling:

Tentative for 3/18/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Daniel Patrick Pinto

Represented By
Onyinye N Anyama

Joint Debtor(s):

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:20-10008 Kennedy Clement Anyama

Chapter 13

#52.00 Motion For Setting Property Value Re: 2014 BMW X6

Docket 21

Tentative Ruling:

Tentative for 3/18/20:

Grant assuming verification that this is not a section 1325(a) "hanging paragraph" transaction.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Kennedy Clement Anyama

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#53.00 Debtor's Motion to Avoid Junior On Principal Residence With CTF Asset Management, LLC

Docket 32

Tentative Ruling:

Tentative for 3/18/20:

Continue for about 30 days to allow creditor to obtain its own appraisal.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega 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
Courtroom 5B Calendar**

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

8:18-12120 Gabriela Orozco

Chapter 13

#54.00 Motion For Allowance Of Administrative Claims

Docket 110

Tentative Ruling:

Tentative for 3/18/20:
Grant. Appearance optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(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, March 18, 2020

Hearing Room 5B

3:00 PM

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

Chapter 13

**#55.00 Debtor's Objection To Claim 5-2 Submitted By Alamitos Real Estate Partners II, LP
(cont'd from 2-19-20)**

Docket 71

Tentative Ruling:

Tentative for 3/18/20:
Continue to June 15, 2020 at 10:00AM to coincide with trial.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Wait for stipulation?

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, March 18, 2020

Hearing Room 5B

3:00 PM

CONT... Daniel J Powers and Ellen A Powers

Chapter 13

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

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

8:19-14344 Maria De Lourdes Chavez

Chapter 13

#56.00 Objection To Claim filed by Exeter Finance LLC c/o AIS Portfolio Services LLC

Docket 27

Tentative Ruling:

Tentative for 3/18/20:

1. There is a question about proper service inasmuch as the address requested by the creditor 4515 N. Santa Fe Ave, Oklahoma City... was not used in favor of addresses in Texas.
2. There is little or no admissible evidence.
3. The debtor engages in supposition such as:
 - a. because she did not take possession, she cannot be responsible... really is that what co-signing or guaranty means?
 - b. the creditor "wrote off" the debt. What, this means the debt is erased?
 - c. the value of the vehicle was more than the balance owed, ergo creditor got paid in full. Really? While this might be true it would be more illuminating if we knew what the foreclosure sale yielded, rather than rely on debtor's hearsay speculations. For example, what was the condition of the auto when it was repossessed? Continue to fix notice.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

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

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

CONT... Maria De Lourdes Chavez

Chapter 13

Debtor(s):

Maria De Lourdes Chavez

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:19-14972 Javier Del Rio

Chapter 13

#57.00 Motion For Order Disallowing Arrearage Portion Of Claim 1 Filed By Capital One Auto Finance, A Division Of Capital One, N.A.

Docket 17

***** VACATED *** REASON: OFF CALENDAR: VOLUNTARY
DISMISSAL OF MOTION FOR ORDER DISALLOWING ARREARAGE
PORTION OF CLAIM 1 FILED BY CAPTIAL ONE AUTO FINANCE
FILED 3-16-20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Del Rio

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, March 18, 2020

Hearing Room 5B

3:00 PM

8:19-10568 Shanae Embry and Terrance Embry

Chapter 13

#58.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 2-19-20)

Docket 67

Tentative Ruling:

Tentative for 3/18/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Grant unless current.

Party Information

Debtor(s):

Shanae Embry

Represented By
Lauren Rode

Joint Debtor(s):

Terrance Embry

Represented By
Lauren Rode

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

Wednesday, March 18, 2020

Hearing Room 5B

3:00 PM

CONT... Shanae Embry and Terrance Embry

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, March 19, 2020

Hearing Room 5B

10:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 11

#1.00 EVIDENTIARY HEARING RE: Debtor's Objection To The Claim Of The Internal Revenue Service
(set from s/c hrg held on 12-04-19)

Docket 83

*** VACATED *** REASON: CONTINUED TO JULY 16, 2020 AT 10:00
A.M. PER ORDER GRANTING STIPULATION TO CONTINUE
HEARING ON DEBTORS' OBJECTION TO THE CLAIM OF THE
INTERNAL REVENUE SERVICE ENTERED 3/3/2020

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**

Friday, March 20, 2020

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

#1.00 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 11-14-19)

Docket 0

***** VACATED *** REASON: CONTINUED TO 3-26-20 AT 10:00 A.M.
PER COURT'S OWN MOTION - THE MARCH 20, 2020 AT 10:00 A.M.
DATE IS NOT A GOOD DATE**

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**

Friday, March 20, 2020

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**

Tuesday, March 24, 2020

Hearing Room 5B

10:30 AM

8:19-12480 Guy S. Griffithe

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

ALASKA USA FEDERAL CREDIT UNION
Vs.
DEBTOR

Docket 104

Tentative Ruling:

Tentative for 3/24/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Movant(s):

Alaska USA Federal Credit Union

Represented By
Carol Baxter
Diana Torres-Brito

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, March 24, 2020

Hearing Room 5B

10:30 AM

8:19-14912 Igor Shabanets

Chapter 7

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

DAIMLER TRUST
Vs.
DEBTOR

Docket 86

Tentative Ruling:

Tentative for 3/24/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Daimler Trust

Represented By
Randall P Mroczynski

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 24, 2020

Hearing Room 5B

10:30 AM

8:19-14912 Igor Shabanets

Chapter 7

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

DAIMLER TRUST
Vs.
DEBTOR

Docket 84

Tentative Ruling:

Tentative for 3/24/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Daimler Trust

Represented By
Randall P Mroczynski

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 24, 2020

Hearing Room 5B

10:30 AM

8:19-14912 Igor Shabanets

Chapter 7

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

DAIMLER TRUST
Vs.
DEBTOR

Docket 85

Tentative Ruling:

Tentative for 3/24/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Daimler Trust

Represented By
Randall P Mroczynski

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 24, 2020

Hearing Room

5B

10:30 AM

8:20-10405 Marc Wayne Wright

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

PUERTO ESCONDIDO LLC
Vs.
DEBTOR

Docket 16

Tentative Ruling:

Tentative for 3/24/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Marc Wayne Wright

Pro Se

Movant(s):

Puerto Escondido LLC

Represented By
Martin W. Phillips

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, March 24, 2020

Hearing Room 5B

10:30 AM

8:20-10680 Direct Sports Media Inc

Chapter 11

#6.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

SHUHONG MA BY HER AGENT HAILIN WANT
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Tentative for 3/24/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Direct Sports Media Inc

Represented By
Damian D Capozzola

Movant(s):

Shuhong Ma by her agent Hailin

Represented By
Julian K Bach

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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

Tuesday, March 24, 2020

Hearing Room 5B

10:30 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

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

JONATHAN BALL
Vs
DEBTOR

Docket 481

Tentative Ruling:

Tentative for 3/24/20:

The movant wants to proceed with trial in New Jersey although he has filed a proof of claim which, absent objection, would be allowed as a matter of course. Complicating matters is a reported affirmative defense / cross-claim. Trustee is uncertain whether there will be a dividend in the case making engagement of counsel likely a waste of resources. The problem arises in that Trustee does not want to take a definitive position, and that is problematic as we cannot detain the other parties indefinitely or unnecessarily.

Grant effective 60 days from entry of this order unless the Trustee affirmatively seeks an extension of the stay. Only liquidation of claims is allowed in any case, no levies absent further order.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By

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

Tuesday, March 24, 2020

Hearing Room 5B

10:30 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Marc C Forsythe

Movant(s):

Jonathan Ball

Represented By
Richard T Baum

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, March 24, 2020

Hearing Room 5B

10:30 AM

8:16-14563 Sherri Lynn Spoor

Chapter 13

**#7.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-10-20)**

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 3/24/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/10/20:
The court would be more receptive to the requested delay were the sale part of the plan or there were not post confirmation arrears of three months. There is no indication that a trustee's sale is imminent so debtor has at least 60 days in any event. *Grant.*

Party Information

Debtor(s):

Sherri Lynn Spoor

Represented By
Sunita N Sood

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

Tuesday, March 24, 2020

Hearing Room 5B

10:30 AM

CONT... Sherri Lynn Spoor

Chapter 13

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Nancy L Lee
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, March 24, 2020

Hearing Room 5B

11:00 AM

8:17-11664 Hannah Kim

Chapter 7

#8.00 Trustee's Final Report And Application For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

BURD & NAYLOR, ATTORNEY FOR CHAPTER 7 TRUSTEE

RINGSTAD & SANDERS LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, CHAPTER 7 TRUSTEE'S ACCOUNTANT

U.S. BANKRUPTCY COURT, CHARGES

Docket 193

Tentative Ruling:

Tentative for 3/24/20:

Allow as prayed. Appearance optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Hannah Kim

Represented By
Dana M Douglas

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room 5B

11:00 AM

CONT...

Hannah Kim

Chapter 7

William M Burd
Nanette D Sanders
Brian R Nelson
Christopher Minier

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

Tuesday, March 24, 2020

Hearing Room

5B

11:00 AM

8:18-11948 Bruce Howard Haglund

Chapter 7

#9.00 Trustee's Final Report And Applications For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

WEILAND GOLDEN GOODRICH LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

COLDWELL BANKER, REALTOR FOR CHAPTER 7 TRUSTEE

FIRST TEAM REAL ESTATE, REALTOR FOR CHAPTER 7 TRUSTEE

FIRST AMERICAN TITLE CORP, OTHER

MARINERS ESCROW, OTHER

WOODBIDGE VILLAGE ASSOCIATION, OTHER

Docket 103

Tentative Ruling:

Tentative for 3/24/20:
Allow as prayed. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, March 24, 2020

Hearing Room 5B

11:00 AM

CONT... Bruce Howard Haglund

Chapter 7

Party Information

Debtor(s):

Bruce Howard Haglund

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

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

Tuesday, March 24, 2020

Hearing Room 5B

11:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

#10.00 Trustee's Final Report And Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

RINGSTAD & SANDERS LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

Docket 161

Tentative Ruling:

Tentative for 3/24/20:
Allow as prayed. Appearance optional.

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Party Information

Debtor(s):

Stephen Nguyen

Represented By
Daniel King

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 24, 2020

Hearing Room 5B

11:00 AM

8:19-11331 Richard Bradley Herron and Jennifer Lee Herron

Chapter 7

#11.00 Trustee's Final Report And Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

RINGSTAD & SANDERS, LLP, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNT FOR CHAPTER 7 TRUSTEE

Docket 51

Tentative Ruling:

Tentative for 3/24/20:
Allow as prayed. Appearance optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Richard Bradley Herron

Represented By
Gregory E Nassar

Joint Debtor(s):

Jennifer Lee Herron

Represented By
Gregory E Nassar

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

Tuesday, March 24, 2020

Hearing Room 5B

11:00 AM

CONT... Richard Bradley Herron and Jennifer Lee Herron

Chapter 7

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 24, 2020

Hearing Room 5B

11:00 AM

8:19-14445 Kimberly S Connell

Chapter 7

#12.00 Motion For Order: (1) Approving Sale of Real Property Free and Clear of Certain Liens; (2) Approving Overbid Procedures; and (3) Authorizing Disbursement of Proceeds

Docket 33

Tentative Ruling:

Tentative for 3/24/20:

There appears to be a notice issue regarding the junior lienholder, Lundigan. If the sale produces enough to pay the lien in full, this might not be an inseparable problem.

Grant provisional upon report on ability to fully satisfy the Lundigan lien.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Kimberly S Connell

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**

Wednesday, March 25, 2020

Hearing Room 5B

10:00 AM

8:19-11965 Play 4 Fun, Inc.

Chapter 11

**#1.00 U.S. Trustee Motion To Dismiss Or Convert Case To A Chapter 7 Pursuant To
11 U.S.C. §1112(B)
(cont'd from 2-26-20)**

Docket 110

Tentative Ruling:

Tentative for 3/25/20:

Dismiss?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 2/26/20:

The failure to meet the timeline ordered by the court and the accrual of unpaid, post-petition obligations, are very troubling. However, finally there is a plan and disclosure on file, and the hearing March 25 is an opportunity to evaluate.

Continue to March 25, 2020 @ 10:00AM.

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, March 25, 2020

Hearing Room 5B

10:00 AM

8:19-11965 Play 4 Fun, Inc.

Chapter 11

#2.00 Chapter 11 Disclosure Statement

Docket 119

Tentative Ruling:

Tentative for 3/25/20:

Dismiss?

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Party Information

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**

Wednesday, March 25, 2020

Hearing Room

5B

10:00 AM

8:18-10370 John J Trejo and Elsie Alfeche Baclayon

Chapter 11

#3.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary
Petition.
(set from s/c hrg. held on 10-31-18)
(cont'd from 10-02-19)

Docket 1

Tentative Ruling:

Tentative for 3/25/20:

Continue to July 22, 2020 at 10:00 a.m. with expectation of a motion closing
the case will be filed in meantime.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to
implement physical distancing, and pursuant to GO 20-02, telephonic
appearances are mandatory on all matters other than evidentiary hearings.
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CourtCall and free access for parties who do not have an attorney – pro se or self-
represented litigants through April 30, 2020.

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:

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Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT... John J Trejo and Elsie Alfeche Baclayon Chapter 11

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.

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.

Tentative for 3/20/18:
Status? See #13.

Tentative for 3/7/18:

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Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT... John J Trejo and Elsie Alfeche Baclayon Chapter 11
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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 25, 2020

Hearing Room 5B

10:00 AM

8:20-10680 Direct Sports Media Inc

Chapter 11

#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

***** VACATED *** REASON: OFF CALENDAR. ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES ENTERED
3/18/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Direct Sports Media Inc

Represented By
Damian D Capozzola

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

Wednesday, March 25, 2020

Hearing Room 5B

10:00 AM

8:19-11153 Harry L Morris, Jr.

Chapter 11

#5.00 STATUS CONFERENCE RE: Chapter 13 Voluntary Petition Individual

Docket 1

Tentative Ruling:

Tentative for 3/25/20:

Deadline for filing plan and disclosure statement: August 31, 2020

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

Debtor to give notice of claims bar deadline by: May 1, 2020, can separately denominate government claims July 31, 2020.

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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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Wednesday, March 25, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#6.00 First Interim Application for Compensation And Reimbursement Of Expenses
For Period: 12/20/2019 to 2/15/2020:

MICHAEL JAY BERGER, DEBTOR'S ATTORNEY

FEE:	\$30,000.00
EXPENSES:	\$1,708.41

Docket 63

Tentative Ruling:

Tentative for 3/25/20:

The failure to make any adequate protection payments to Wells Fargo should sound alarm bells for everyone, particularly debtor's counsel. Obviously the debtor is suffering severe cash flow issues, which brings into question why the court should allow fees since the whole premise of the case is now subject to re-examination, whether fees were part of a cash collateral stipulation or not.

No allowance at this time absent a better explanation of where we're going and how we're likely to get there.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By

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

10:00 AM

CONT... Talk Venture Group, Inc.

Michael Jay Berger

Chapter 11

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 25, 2020

Hearing Room

5B

10:00 AM

8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

#7.00 Motion of Creditor Richard Ross for Order Re: Estimate Claim for Purposes of Voting on Debtors Chapter 11 Plan Pursuant to Section 502(c) of the Bankruptcy Code and Rule 3018 of the Federal Rules of Bankruptcy Procedure

Docket 66

Tentative Ruling:

Tentative for 3/25/20:

This is Creditor, Richard Ross' ("Creditor's") motion for order estimating his claim for purposes of voting on debtors' chapter 11 plan pursuant to 11 U.S.C. §502(c) and FRBP 3018. The motion is opposed by Debtors, Ralph and Shelley Burnett ("Debtors").

Allowance of claims or interests is governed by 11 U.S.C. § 502, which states in pertinent part:

"(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest... objects[...]

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance."

Creditor argues that the court should grant the motion and estimate his aggregate unsecured claim against the Debtors and their bankruptcy estate for no less than \$450,000 or as much as approximately \$478,000. According

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Santa Ana
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CONT... **Ralph Maxwell Burnett, III and Shelley Lynn Burnett** Chapter 11

to Creditor, he was in a written fully binding contractual relationship with the Debtors to purchase their residence located at 13341 Sandhurst Place, Santa Ana, CA 92705 ("Sandhurst Property"), which such purchase would have allowed Debtors to remain in their home despite the Debtors' dire financial straits, including the eve of a pending foreclosure sale. Creditor asserts that it was always agreed as expressly provided for in the written and signed Escrow Instructions that Creditor would purchase Debtors' Sandhurst Property for a below market price of \$950,000. However, both Creditor Ross and the Debtors fully were aware that the Sandhurst Property was worth approximately \$1,350,000 in July/August 2019. Nonetheless, Creditor asserts, totally unbeknownst to him, Debtors had no intention of following through on their contractual relationship to sell the Sandhurst Property to Creditor. Consequently, Creditor argues that he is entitled to his reliance and general expectation damages as provided under applicable non-bankruptcy law (i.e. Section 3300 et seq. of the California Civil Code).

Additionally, Creditor asserts that Debtors do not legitimately dispute Creditor's entitlement to no less than \$28,350 for the Debtors' August 2018 Promissory Note. Thus, the aggregate amount of Creditor's claim against the Debtors' estate is no less than \$478,350 (\$450,000 damages re: Sandhurst Place Property, along with the \$28,350 unpaid August 2018 Promissory Note).

Debtors dispute the legitimacy of Creditor's claim and argue that the value of his claim is zero. Debtors point out that on October 10, 2019, Creditor filed a proof of claim, on the claims register in the Debtors' Main Bankruptcy Case as Claim Number 4, for \$500,000, with the basis for the claim being described as "promissory note, money loaned, and real estate purchase contract" (referred to herein as "the Ross Claim"). Crucially, Debtors argue, although the Official Form 410 Proof of Claim specifically instructs the claimant to "attach redacted copies of any documents supporting the claim

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CONT... Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

required by Bankruptcy Rule 3001(c)", no supporting documents were attached to the Creditor's claim.

Rule 3001(c)(1) requires written support to be attached to a proof of claim, to wit:

Claim Based on a Writing. Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

The consequence of not attaching documentary evidence in support of a Proof of Claim, Debtors argue, is that alleged documentation will not be admitted later. In support of this assertion, Debtors argue that according to Rule 3001(c)(2)(D)(i) provides that after notice and hearing, the court should not admit evidence in support of the claim in any form (which would presumably include testimony) if the creditor did not attach the documents to the Proof of Claim:

If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions: (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Debtors argue that Creditor has not attempted to explain or justify his failure to attach supporting documentation to his proof of claim despite the

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CONT... **Ralph Maxwell Burnett, III and Shelley Lynn Burnett** Chapter 11

claim being filed six months ago. By contrast, Debtors argue that the court has the testimony of the Debtors. Debtors attached Exhibit A to their opposition, which is the declaration of the Debtor that establishes that the Debtors never agreed to any extension to close the escrow on the sale of the real estate at issue. Moreover, Debtors argue that the same declaration states that there is no balance due on any loan or promissory note allegedly owed to Creditor. The declaration also states that it was Creditor, not the Debtors, that failed to close the escrow by the deadline of August 15, 2019. The admissible evidence before the court, Debtors argue, is that it was Creditor, not the Debtors, that failed to perform under the terms of the escrow instruction. Further, Debtors assert, the evidence also shows that the Debtors owe Ross nothing. Debtors therefore conclude, if the Court ascribes an estimated value to the Ross claim, the estimated value should be \$0.00.

Debtors then argue that if the contested claim is allowed in the requested estimated amount, it is still subject to offset by the Debtors' claim against Creditor, which would result in a net estimated value of \$0.00. Debtors assert that Creditor's claim is *prima facie* evidence that he intended to exploit his access to confidential information of the Debtors to enable him to obtain a \$500,000 benefit to the detriment of his own client—the Debtors. Therefore, after applying the setoff, Creditor's claim would still have a value of negative \$50,000, or effectively \$0.00.

Debtors also point out that there is a pending claim objection to Creditor's filed claim and as a result the claim is not an allowed claim under 11 U.S.C. §502(a). The claim objection is on the docket for the adversary proceeding *Ross v. Burnett*, case number 8:19-ap-01230-TA, Document Number 7, as a compulsory counterclaim and as specifically permitted under Federal Rules of Bankruptcy Procedure Rule 3007(b). Debtors argue that if there has been an objection to the claim, the claim holder will not be able to vote on the plan, unless that claim holder has received temporary allowance of his claim from the court or the court has settled the claim in the claimholder's favor. See *In re Miami Trucolor Offset Service Co.*, 187 B.R.

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CONT...

Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

767, 769 (Where the debtor objected to two claims and neither claimholder sought temporary allowance; the creditors were not allowed to accept or reject the plan); *In re M. Long Arabians*, 103 B.R. 211, 215 (9th Cir. BAP 1989) (The debtor objected to the claims of a creditor "Bell Road." Bell Road did not seek temporary allowance of its claims; thus, the court held that Bell Road did not hold an allowed claim and had no right to accept or reject the plan.); *In re General Homes Corp.*, 134 B.R. 853, 860 (Bankr. S.D. Tex. 1991) (A creditor is not entitled to vote where its claim is subject to a filed objection for which no temporary allowance for voting purposes had been sought.). However, Debtors concede that the law allows that temporary allowance of a claim may be gained pursuant to Fed. R. Bankr. P. Rule 3018(a). This rule states that, notwithstanding objection to a claim or interest, the court may temporarily allow a claim or interest in an amount the court deems proper for the purpose of accepting or rejecting a plan. However, in this case, it does not appear that Creditor ever sought temporary allowance of his claims until after the voting deadline had passed, which Debtors argue in the 9th Circuit is a fatal error.

In support of this argument, Debtors cite *In re M. Long Arabians*, 103 B.R. 211 (9th Cir. BAP 1989), which Debtors argue directly addresses the question of when a creditor gets to vote for or against a plan—"Until a party is deemed to have an 'allowed' claim, or actually as an allowed claim, it has no right to accept or reject a plan." *Id.*, at 215. Thus, Debtors conclude, a creditor only gets to cast a vote once it has an allowed claim. Debtors argue further that it is the court that establishes the balloting period during which votes may be timely cast. FRBP 3017(c)—"the court shall fix a time within which the holders of claims and interests may accept or reject the plan." Thus, Debtors assert, on 13 January 2020 when Creditor cast his ballot, he was not actually allowed to vote, and therefore his vote did not and should not count under the controlling law of FRBP Rule 3018(a) and *Arabians*.

Creditor does not dispute the language of FRBP 3018 or the holding of *Arabians*. Instead, he argues that *Arabians* is distinguishable from the present

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CONT... **Ralph Maxwell Burnett, III and Shelley Lynn Burnett** Chapter 11

case because Debtors are, according to Creditor, obviously acting in bad faith since they know that the documents supporting his claim both exist and are admissible. Creditor offers no explanation as to how or why the court should overlook his deficient proof of claim, which is what requires resolution; that documents might exist in the abstract obviously does not cure the problem presented by the Rule.

The court very recently ruled that Creditor had filed a complaint that satisfied the pleading standards, albeit just barely. The subject matter of that complaint derived from the same underlying alleged misconduct by Debtors. Debtors have made a persuasive case that Creditor, presently, does not hold a valid proof of claim for want of supporting documentation because it has been objected to. Nor has Creditor remedied the documentation deficiency even after the Rule 12 motion. Nor has Creditor sought permission from this court to have his clearly disputed claim temporarily allowed for purposes of voting on a plan. So, it is not clear that surviving a Rule 12 motion to dismiss in the adversary proceeding by itself resuscitates Creditor's right to vote given the above authorities, particularly absent a Rule 3018(a) motion.

On the issue of voting, *In re M. Long Arabians* is instructive and is controlling authority. In that case, a creditor who's claim faced an objection, was held not to have had a claim for purposes of voting. "Section 502(a) provides that a claim is 'deemed allowed, unless a party in interest . . . objects.' Accordingly, until a party is deemed to have an 'allowed' claim, or actually has an allowed claim, it has no right to accept or reject a plan." *Id.* at 215. The only way the claimant in *Arabians* could have exercised a vote was if they had sought temporary permission under FRBP 3018(a), which it did not. Thus, the BAP affirmed the bankruptcy court's decision that Claimant's votes were invalid and should not be counted.

Here, it appears that Creditor did not have an allowable claim initially due to want of supporting documentation. The court appears to have discretion as to whether it will accept other forms of writing as a supplement if

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it determines that the failure to attach such documentation was justified or harmless. However, for purposes of voting, it appears that Debtors did object to Creditor's proof of claim, albeit in a counterclaim (8:19-ap-01230; dkt. #7, p. 9-10). This would have put Creditor on clear notice that his claim was disputed and thus not allowed. As such, pursuant to *Arabians*, Creditor should have sought temporary permission of this court to be allowed to vote pending adjudication of the disputed claim. Creditor failed to do this and, therefore, cannot have his vote counted.

Regarding Debtors' assertion of offset, the court observes that this argument appears to be highly speculative and, notably, not supported by any authority. Thus, the court is not persuaded that this is a colorable argument requiring further analysis and is unnecessary to reach the result below in any event.

Thus, it appears that Creditor does not currently possess an allowed claim for purposes of voting on Debtors' plan (it being objected to which objection is not resolved). Critically, Creditor has also not sought temporary permission to vote on such a plan. The court is also not persuaded that Debtors have engaged in any bad faith. The fact that Debtors may have prosecuted objection to the claim in unorthodox manner (through a counterclaim in the adversary proceeding) does not in and of itself equate to bad faith and does not excuse Creditor's failure to properly support his proof of claim nor the failure to seek Rule 3018(a) authority, and the voting period has passed.

Estimate at zero for purposes of voting

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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CONT... Ralph Maxwell Burnett, III and Shelley Lynn Burnett
represented litigants through April 30, 2020.

Chapter 11

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

Movant(s):

Richard Ross

Represented By
Thomas J Polis

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8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett

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**#8.00 Confirmation Of Chapter 11 Plan
(cont'd from 2-05-20)**

Docket 38

Tentative Ruling:

Tentative for 3/25/20:
Confirm. See #7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 2/5/20:
Confirm.

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

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CONT...

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Michael Jones
Sara Tidd

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8:20-10143 Bridgemark Corporation

Chapter 11

#9.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero

Docket 93

Tentative Ruling:

Tentative for 3/25/20:

Stipulation to continue to 4/29/20 expected per phone message. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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8:19-14307 Roadking Trucking, LLC

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#10.00 Motion for Order: (1) Approving Sale of Substantially All Property of the Estate Subject to Overbidding Pursuant to 11 U.S.C. 363(b); (2) Approving Sale Free and Clear of Superior Drivers' Interests and Liens Pursuant to 11 U.S.C. 363(f); and (3) Finding Buyers Are Good Faith Purchasers Pursuant to 11 U.S.C. 363(m)

Docket 55

Tentative Ruling:

Tentative for 3/25/20:

This is Debtor, Roadking Trucking, LLC's ("Debtor's") motion to (1) approve sale of substantially all property of the estate subject to overbidding pursuant to 11 U.S.C. § 363(b); (2) approve the sale free and clear of Superior Drivers' interests and liens pursuant to 11 U.S.C. § 363(f); and (3) finding buyers are good faith purchasers pursuant to 11 U.S.C. § 363(m). The motion is opposed by creditors, Bibby Transportation Finance ("Bibby"), and Superior Drivers, Inc. ("Superior Drivers"), which is made up of several individual creditors.

1. **Terms of the sale** are as follows:

Proposed Buyers: RoadKing Trucking West Coast, LLC and RoadKing Logistics, Inc. ("Buyers"). There is an ownership interest in one or both entities of the current principal, Michael Noles;

Property to Be Sold: All assets, including (1) accounts receivable, (2) office furniture and fixtures, and (3) goodwill and other intangibles, but excluding cash in DIP accounts ("Assets");

Sale Price: \$69,000

Treatment of Liens and Interests:

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Bibby Transportation Finance: Sale is subject to undisputed senior lien of Bibby Transportation Finance, Inc.;

Superior Drivers: Sale is free and clear of disputed junior liens and interests of the Superior Drivers;

Overbidding: Proposed sale is subject to overbidding. Minimum initial overbid must be at least \$69,500.

Tax Consequences: No adverse tax consequences are anticipated from the sale

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.

2. Bibby's Opposition

Bibby's main opposition to this motion stems from Bibby's concerns that Debtor intends to sell all of its accounts receivable to the successful buyer even though there is already a true factoring agreement in place that

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vests Bibby the rights to Debtor's accounts receivable. Bibby also has a first and prior lien as to substantially all of Debtor's assets, which cross-collateralizes Debtor's pre-petition and post-petition obligations to the factor. Bibby is concerned that through the Sale Motion, Debtor proposes to transfer all of its assets, without satisfaction of the obligations due Bibby. The Sale Motion appears to contemplate a transfer of the estate's assets subject to Bibby's priority lien, but that is left unclear.

In response to these concerns, Debtor asserts and acknowledges that it does not consider the accounts receivable already factored and sold to Bibby to be property of Debtor's bankruptcy estate. Therefore, Debtor asserts that it does not intend or seek court approval to re-sell such accounts to the Buyers under the Motion. Instead, the Motion contemplates that Debtor's business will be sold as a going concern and that the sale will close not later than 120 days after entry of a court order approving the sale. (The 120-day escrow period is required for the Buyers to obtain all regulatory approvals, licenses, permits, insurance, etc. before continuing operations.) To that end, Debtor will propose a sale order that expressly excludes all cash and accounts receivable from the property sold, which apparently resolves Bibby's objection.

Regarding Bibby's concern over its lien, Debtor argues that the concern is due to an overstatement of the relief requested in the Motion, which seeks to sell the Assets subject to Bibby's lien. Debtor believes that Bibby is over secured by (1) its continued collection on the factored accounts from SeaLogix; (2) the prepetition and post-petition reserve accounts (which totaled \$24,924 as of February 29, 2020), and (3) its senior lien against Debtor's bankruptcy estate (including the sale proceeds). Thus, per its request, Debtor states that it will work with Bibby "on a plan for satisfaction of the remaining obligations under the [DIP Financing Order] in connection with the proposed sale." Debtor expects Bibby to continue factoring Debtor's accounts receivable until the sale closing. Debtor will fully cooperate with Bibby towards the ending of the factoring relationship and ensure that Bibby

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receives full payment of its secured claim. But what the court is supposed to do with that is left very unclear.

3. Superior Driver's Opposition

Superior Drivers essentially object on the basis that the sale contemplated by the motion is conclusory and unfair because it would sell off all of the assets of Debtor to two companies affiliated with Debtor (or its principal) but leave Debtor and its principals free to conduct the business with no regard for or chance to vote by the creditors, concluding that the motion should not be approved. As an alternative, Superior Drivers requests that a ruling on the motion be postponed until Debtor proposes a plan of reorganization. Superior Drivers also points out that each of the Creditors has each filed a Proof of Claim based on their judgment collectively for over \$3 million in unpaid wages, unreimbursed expenses, penalties and interest against Debtor as the successor in interest Superior Dispatch, Inc. One of the proposed buyers is co-owned by Michael Noles, the Debtor's owner and the son of Melinda Melgar, who co-owned Superior Dispatch, Inc. with her husband Cesar Melgar. Superior Dispatch, Inc. is the company that owed the Creditors \$3 million in unpaid wages etc., which is the entity that that the Debtor was found at trial to be successor in interest.

As argued by Debtor, it is generally well settled, however, that § 363 sales may be conducted prior to plan confirmation so long as there is a good business reason for the sale. See e.g., *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). "Neither the Code nor the caselaw ... requires waiting for the plan confirmation process to take its course when the inevitable consequence would be a liquidation. Bankruptcy courts have the power to authorize sales of assets at a time where there still is value to preserve—to prevent the death of the patient on the operating table." *In re GMC*, 407 B.R. 463, 474 (Bankr. S.D.N.Y. 2009).

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Section 363 provides that a trustee or debtor in possession "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). "Notably, section 363 has no carveouts from its grant of authority when applied in cases under chapter 11 for dispositions of property exceeding any particular size, or where the property is of such importance that it should alternatively be disposed of under a plan. Nor does any other provision of the Code so provide." *GMC*, 407 B.R. at 486. Instead, "section 363 sales of major assets may be effected before confirmation." *Id.* at 488; see also *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 37 n.2 (2008) ("Chapter 11 bankruptcy proceedings ordinarily culminate in the confirmation of a reorganization plan. But in some cases, as here, a debtor sells all or substantially all its assets under § 363(b)(1) before seeking or receiving plan confirmation.").

Further, when determining whether there is a good business reason for a §363(b) sale before confirmation, a bankruptcy court should consider all of the "salient factors pertaining to the proceeding," including:

- (a) the proportionate value of the asset to the estate as a whole;
- (b) the amount of elapsed time since the filing;
- (c) the likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- (d) the effect of the proposed disposition on future plans of reorganization;
- (e) the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property;
- (f) which of the alternatives of use, sale or lease the proposal envisions; and "most importantly perhaps,"
- (g) whether the asset is increasing or decreasing in value. *GMC*, 407 B.R. at 490 (citing *Lionel*, 722 F.2d at 1071).

Importantly, however, the bankruptcy court must also consider if those

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opposing the sale produced some evidence that the sale was not justified. *Id.*; see also *Lionel*, 722 F.2d at 1071 ("[W]e must consider whether [sale opponents] produced evidence before the bankruptcy court that such sale was not justified. While a debtor applying under § 363(b) carries the burden of demonstrating that a use, sale or lease out of the ordinary course of business will aid the debtor's reorganization, an objectant ... is required to produce some evidence respecting its objections.").

Here, Debtor argues that abundant evidence of sound business justification exists to approve this sale, and Superior Drivers has not come forward with any contrary evidence. For example, Debtor asserts that its proposed sale of office furniture, equipment and fixtures will be sold above market value for a total of \$69,000. Debtor also asserts that since the petition date, Debtor has been operating on essentially a break-even basis, which makes a sale preferable to a reorganization. Debtor also foresees several obstacles toward a reorganization including: (1) the additional administrative expenses incurred to propose and confirm a chapter 11 plan (which would impede payment to other creditors), (2) operational uncertainties given the changing regulatory landscape described in the Motion (i.e., AB-5), and (3) certain obstacles to plan confirmation such as obtaining a consenting class of impaired creditors. Debtor further states that after the sale is consummated, it intends to convert its case to Chapter 7. The appointed chapter 7 trustee will have the discretion as to how proceeds of the sale will be distributed to creditors. Thus, Debtor argues that Superior Drivers' assertion that Debtor is attempting a *sub rosa* plan is simply incorrect. Debtor does concede that it has not yet obtained an appraisal on its assets but asserts that this should be overlooked because the sale is subject to overbidding and that, so far anyway, it has been unable to garner any interest in bidding aside from the proposed buyers despite advertisement.

Debtor also asserts that the assets it proposes to sell are subject to diminishing value due to certain regulatory changes. For example, Debtor asserts that AB-5 may soon prevent Debtor, a motor freight carrier, from

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using subcontractor drivers to haul its loads. If the enforcement stay of AB-5 is lifted, then Debtor could not operate without hiring the drivers as employees, which would fundamentally change the structure of Debtor's current business model and may require it to shut down. This, together with the uncertainty caused by the current coronavirus pandemic adds additional urgency to the sale. Debtor argues that the sooner the sale is approved and completed, the sooner there will be payouts to creditors. These considerations, Debtor argues, demonstrate a sound business justification for approving the sale.

The court agrees that there appears to be a sound business justification for approving the sale. However, the court is not certain about whether the buyers, as insiders of Debtor, are good faith purchasers. The motion is quite vague and mostly conclusory as to why Buyers should be approved as good faith purchasers, especially given the concerns voiced by Superior Drivers. On the other hand, a sale is likely the best chance to get something to these creditors, whereas the prospects of a successful reorganization, given the current economic climate, are highly speculative at best, non-existent at worst. Moreover, the price is so modest that, after administrative and priority claims, it seems unlikely that general unsecured creditors will get anything. Debtor also asserts that Superior Drivers' ORAP lien is subject to *bona fide* dispute pursuant to a present adversary proceeding (8:19-ap-01223). In that case, Debtor is seeking to avoid the ORAP lien and Assignment Order as preferential transfers. There is a motion for summary judgment that is set for hearing on April 1, 2020 at 11:00 a.m.

4. Conclusion

A few points emerge clearly. First, this motion represents a big ask, i.e. a very small price, unsupported by an appraisal, to entities affiliated with

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an insider, of substantially all the assets, which will likely result in little or no recovery by the unsecured creditors who are objecting. The resulting question is, is there an alternative? There might well not be, realistically. It is also clear that this case does not belong in Chapter 11 as it has been on its deathbed for months now, and its prospects for reorganization are nil. Debtor admits as much. So, what to do? The court will convert the case to Chapter 7 *sua sponte* and have the Chapter 7 trustee evaluate the advisability of the sale before a continued hearing on the sale.

Convert to Chapter 7 and continue sale hearing for 30 days to allow a review by the Chapter 7 trustee. An operating order pending the sale may be obtained upon request. The appointed trustee is requested to provide a short evaluation report on the sale as soon as possible before the hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

Movant(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

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8:19-14307 Roadking Trucking, LLC

Chapter 11

#10.10 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual LLC
(cont'd from 3-12-20)

Docket 1

Tentative Ruling:

Tentative for 3/25/20:
See #10.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/12/20:
Why no status report?

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

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CONT... Roadking Trucking, LLC

Christopher J Langley
Donald Reid

Chapter 11

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8:19-12512 Sococo, Inc.

Chapter 11

#11.00 Motion For An Order Disallowing Proof Of Claim No. 2 (As Amended) Filed By Department Of Treasury - Internal Revenue Service Against Visiblegains, Inc (cont'd from 2-5-20 per order approving stip. to cont. hrg entered 3-25-20)

Docket 85

*** VACATED *** REASON: CONTINUED TO MAY 13, 2020 AT 10:00 A.M. PER ORDER APPROVING THIRD STIPULATION TO CONTINUE HEARING ENTERED 3/20/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sococo, Inc.

Represented By
Ron Bender
Krikor J Meshefejian
Lindsey L Smith

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8:18-12723 Sohayl Khusravi

Chapter 7

Adv#: 8:18-01200 Hudson Insurance Company v. Khusravi et al

**#1.00 STATUS CONFERENCE RE: Complaint of Secured Creditor Hudson Insurance Company To Determine Nondischargeability of Debt
(con't from 1-23-20)**

Docket 1

Tentative Ruling:

Tentative for 3/26/20:

Status conference continued to coincide with Motion For Default Judgment filed 3/19.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 1/23/2020:

Where the the default and prove up?

Tentative for 12/12/19:

Settled or not? Writing? Appearance required.

Tentative for 10/3/19:

Why no status report?

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CONT... **Sohayl Khusravi**

Chapter 7

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

Bushra Saleh Salman

Pro Se

Joint Debtor(s):

Bushra Saleh Salman

Represented By
Michael N Nicastro

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CONT... Sohayl Khusravi

Chapter 7

Plaintiff(s):

Hudson Insurance Company

Represented By
Christian J Gascou

Trustee(s):

Thomas H Casey (TR)

Represented By
Karen S. Naylor

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8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:19-01047 Golden v. Easton & Easton, LLP et al

- #2.00** 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
(con't from 2-06-20)

Docket 1

Tentative Ruling:

Tentative for 3/26/20:

Status conference continued to September, 26, 2020 at 10:00AM

Deadline for completing discovery:

Last date for filing pre-trial motions:

Pre-trial conference on: September 26, 2020 @ 10:00AM.

Joint pre-trial order due per local rules.

Was there a settlement or not? Can the terms be enforced?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 2/6/20:

Status conference continued to March 26, 2020 at 10:00a.m.

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CONT... Nezamiddin Farmanfarmaian

Chapter 7

Court expects finalization of reported settlement documentation.

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.

Party Information

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
Eric P Israel
Aaron E de Leest

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8:19-13493 Ralph Maxwell Burnett, III

Chapter 11

Adv#: 8:19-01230 Ross v. Burnett, III et al

#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(2) and 523(a)(6) of the Bankruptcy Code (cont'd from 2-27-20 per another summons issued on 1-10-20)

Docket 1

Tentative Ruling:

Tentative for 3/26/20:

Deadline for completing discovery: August 31, 2020

Last date for filing pre-trial motions: September 21, 2020

Pre-trial conference on: October 15, 2020 at 10:00AM

Joint pre-trial order due per local rules.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Ralph Maxwell Burnett III

Pro Se

Shelley Lynn Burnett

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 26, 2020

Hearing Room 5B

10:00 AM

CONT... Ralph Maxwell Burnett, III

Chapter 11

Joint Debtor(s):

Shelley Lynn Burnett

Represented By
Michael Jones
Sara Tidd

Plaintiff(s):

Richard Ross

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, March 26, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

#4.00 STATUS CONFERENCE RE: Complaint Of Creditor For Denial Of Discharge (11 U.S.C. Section 727) And To Determine Nondischargeability Of Debt (11 U.S.C. Section 523(a))
(another summons issued on 1/6/2020)

Docket 1

Tentative Ruling:

Tentative for 3/26/20:

Status conference continued to June 25, 2020 at 10:00AM for completion of arbitration.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Plaintiff(s):

Adam Seligman

Represented By
Amy Johnsgard

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, March 26, 2020

Hearing Room 5B

10:00 AM

CONT... Deborah Jean Hughes

Chapter 7

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, March 26, 2020

Hearing Room 5B

10:00 AM

8:19-13860 Eric Botelho

Chapter 7

Adv#: 8:20-01003 American Express National Bank v. Botelho et al

#5.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt

Docket 1

Tentative Ruling:

Tentative for 3/26/20:

Status conference continued to May 28, 2020 at 10:00AM with expectation that default judgment will be obtained in the meantime.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Eric Botelho

Represented By
Gary Polston

Defendant(s):

Eric Botelho

Pro Se

Margo Botelho

Pro Se

Joint Debtor(s):

Margo Botelho

Represented By
Gary Polston

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

10:00 AM

CONT... Eric Botelho

Chapter 7

Plaintiff(s):

American Express National Bank

Represented By
Dennis C. Winters

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, March 26, 2020

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

- #6.00** 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 3-20-19 - the original cont. date was 3-20-20 - not a good date - a good date 3-26-20 at 10:00 a.m.)

Docket 0

Tentative Ruling:

Tentative for 3/26/20:
Status?

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Tentative for 11/14/19:
See #5

Tentative for 10/3/19:
Should a trial be set in view of Mr. Albert's withdrawal?

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10:00 AM

CONT... Cheri Fu

Chapter 7

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.

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

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
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Thursday, March 26, 2020

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

- #6.10** 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))
(cond't from 3-12-20)

Docket 1

Tentative Ruling:

Tentative for 3/26/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/12/20:

So what is status? At earlier conferences there was discussion about a Rule 56 motion, but nothing appears to be on file. Continue to coincide with pre-trial conference on March 26, 2020 at 10:00AM.

Tentative for 6/6/19:

While waiting for a Rule 56 motion a dispute has arisen re: real party in interest.

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10:00 AM

CONT... Cheri Fu

Chapter 7

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

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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10:00 AM

CONT... Cheri Fu

Chapter 7

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
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Thursday, March 26, 2020

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

#7.00 PRE-TRIAL 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 1-31-19)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING STIPULATION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO COURT-APPROVED SETTLEMENT AGREEMENTS ENTERED 7/11/19.**

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.

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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Tentative for 9/14/17:

No deadlines were fixed at the last conference. Now, six months later, it appears from the joint status report that discovery is only just starting and both parties believe trial should be at least one year away. Would setting of deadlines now assist timely preparation of the case?

Tentative for 3/30/17:

It would seem too early to fix deadlines. Continue status conference for approximately 6 months hence.

Party Information

Debtor(s):

Anna's Linens, Inc.

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

**United States Bankruptcy Court
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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

	Abigail V O'Brient
DCP Linens Lenders, LLC	Represented By 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

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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Welcome Industrial Corporation

Represented By
Steven T Gubner
Michael W Davis
Jason B Komorsky

Trustee(s):

Karen S Naylor (TR)

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

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

#8.00 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)
(cond't from 3-12-2020 per order approving stip. to cont. pre-trial conf. entered 2-28-2020)**

Docket 83

Tentative Ruling:

Tentative for 3/26/20:
Schedule trial date in approximately 60-90 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 11/14/19:
If no appearance, issue OSC re: dismissal for lack of prosecution.

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10:00 AM

CONT... Stacey Lynn Schmidt

Chapter 7

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?

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.

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CONT... Stacey Lynn Schmidt

Chapter 7

Tentative for 11/2/17:
See #4. What is happening on February 1, 2018 at 11:00 am?

Tentative for 10/12/17:
Status conference continued to November 2, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, March 26, 2020

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#9.00 Debtor's Objection To Proof Of Claim of LVNV Funding, LLC, Resurgent Capital Services

Docket 52

Tentative Ruling:

Tentative for 3/26/20:

Debtor's claim objection appears to have merit. The account is quite old at this point and collection would likely be barred by the 4 year statute of limitations imposed by section 337 of the California Code of Civil Procedure. However, as the opposition points out, the notice of the claim objection is likely deficient because Debtor input the incorrect claim number. Of greater consequence is that Debtor did not attach a sworn declaration to her claim objection, which is required under LRBP 3007-1(c)(1).

Debtor is be advised to amend her claim objection to include a sworn declaration and ensure that all interested parties are properly noticed and served.

Continue to June 25, 2020 at 11:00AM. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

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CONT... Deborah Jean Hughes

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#10.00 Debtor's Objection To Claim Of Ford Motor Credit Company

Docket 51

Tentative Ruling:

Tentative for 3/26/20:

Debtor is *pro se* and her claim objection is missing a few key documents, mainly a declaration and a proof of claim for the amended claim objection. Also, Debtor should be instructed to use the claim number as it appears in the claim register in her case, not the much longer number she provided.

Overrule the objection with leave to amend. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#11.00 Debtor's Notice Of Objection To Proof Of Claim

Docket 53

Tentative Ruling:

Tentative for 3/26/20:

It is clear that this claim should not be resolved in a summary claims proceeding. Rather, the likely path will be resolution either through the pending arbitration proceeding or the pending dischargeability adversary proceeding. At the April 1, 2020 relief of stay motion, Creditor is requesting that the arbitration be allowed to proceed. Continue to coincide with relief of stay motion, and if stay is relieved, further continue for a long enough period so that arbitration be allowed to finish.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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11:00 AM

8:17-14117 Richard Paul Herman

Chapter 7

#12.00 Debtor Richard P Herman's Motion To Alter, Modify Or Set Aside This Courts Orders And Judgment Listed Rules 59, 60

Docket 167

Tentative Ruling:

Tentative for 3/26/20:

The identical motion is brought by the Debtor to alter, modify or set aside pursuant to Fed. R. Civ. P. 59 and 60 in both his main case [#12] and in the adversary proceeding *Foothill Financial v. Herman*, 8:19-ap-01075 [#14]. Consequently, both motions are addressed in this single memorandum.

As the court understands it, the Debtor in his motion seeks relief from the following:

- 1) The court's Order Converting Case to Chapter 7 entered in the Bankruptcy Case on February 15, 2019 [Bankr. Docket No. 83];
- 2) The court's Order Granting Plaintiff's Motion for Preliminary Injunction and Temporarily Staying State Court Action entered in the Adversary Proceeding on June 6, 2019 [Adv. Docket No. 25];
- 3) The court's Order Granting Motions to Dismiss (the "Second Dismissal Order") entered in the Adversary Proceeding on October 22, 2019 [Adv. Docket No. 73];
- 4) The court's Order Denying Motion of Defendant/Debtor Richard P. Herman to Compel the Trustee to Abandon Trustee's Interest in State Court and Adversary Litigation and for the Court to Abstain from all Adversary Litigation entered in the Adversary Proceeding on December 17, 2019 [Adv. Docket No. 88];
- 5) The court's Order Granting Motion to Approve Settlement and

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CONT...

Richard Paul Herman

Chapter 7

Compromise between Chapter 7 Trustee and Foothill Financial, L.P. entered in the Bankruptcy Case on December 26, 2019 [Bankr. Docket 157]; and

6) The court's Judgment entered in the Adversary Proceeding on January 8, 2020 [Adv. Docket No. 91].

Unfortunately, the motion is not covering any new ground. The arguments advanced by Debtor are repackaged arguments from the recent past and, unsurprisingly, the same problems for Debtor persist.

For example, Debtor is attempting to bring this motion under FRCP 59(e), but again, as in the past, Debtor has not timely sought this relief. FRCP 59(e) provides that a "motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." FRBP 9028 adopts Rule 59(e) but shortens the time period, providing that a "motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment." Here, the Judgment was entered January 8, 2020. The Motion was filed January 29, 2020, outside the 14-day period. The lateness problem is of course even more obvious regarding all the other earlier orders. Consequently, the Motion under Rule 59 is late, and any relief sought thereunder must be denied.

Similarly, as in the past when Debtor has sought relief under FRCP 60, he has once again failed to fulfill the basic requirements. FRCP 60(b) provides:

"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);

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CONT...

Richard Paul Herman

Chapter 7

(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."

Debtor is not specific upon which portion of Rule 60 the motion relies. Debtor again argues that there has been a sea change in the law in the case of *Magic Carpet Ride LLC v. Rugged Investment Group, LLC*, 41 Cal. App. 5th 357 (2019). However, this court has thoroughly analyzed *Magic Carpet* on more than one previous occasion and has held in clearest terms that this case did not have the "magic" Debtor believes it had; in fact, *Magic Carpet* is well within preexisting law and is, in any event, fundamentally distinguishable both legally and factually from the case at bar. But Debtor persists. See Adopted Tentative Ruling from 12/17/19.

Trustee also notes, and the court agrees, that nowhere in Debtor's motion does he argue or present any evidence (or even argument) as to the other bases for Rule 60 relief: mistake, newly discovered evidence, fraud, a void judgment, or a satisfied judgment. The sole basis for the Motion appears to be the *Magic Carpet* decision. The court is not persuaded that it has misread *Magic Carpet* the first time, or the second, or that it is in error finding it distinguishable, and nothing in this latest motion moves that needle.

Persistence is an admirable quality in many contexts. However, in others, as here, persistence eventually shades into contumacy. The court is weary of repackaged arguments that, when viewed historically, are devoid of any substance, contain nothing new and appear to be nothing more than the same thing brought again and again in the vain hope that if asked enough times the answer will change without any reason for so doing but solely out of weariness. Further motions that are poorly disguised attempts at seeking

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CONT... Richard Paul Herman Chapter 7

relief that this court has previously ruled on, and in some cases multiple times, will be met with appropriate sanctions as improper attempts to multiply costs and as violative of Rule 11.

Deny

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

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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

**#13.00 Evaluation Hearing RE: Plaintiff's Motion for Preliminary Injunction
(con't from 1-30-20 per order approving stipulation entered 1-24-20)**

Docket 5

Tentative Ruling:

Tentative for 3/26/20:
What is the status of this portion of the case?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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

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

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Hearing Room 5B

11:00 AM

CONT...

Richard Paul Herman

Chapter 7

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 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

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Chapter 7

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 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

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CONT... Richard Paul Herman Chapter 7

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 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.

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Chapter 7

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 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 Plaintiff's 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.

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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 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

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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 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.

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11:00 AM

CONT... **Richard Paul Herman**
Grant

Chapter 7

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
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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

#14.00 Debtor Richard P. Herman's Motion to Alter, Modify, or Set Aside this Court's Orders and Judgment Listed. Rules 59,60 (and Bankruptcy Equivalents)

Docket 107

Tentative Ruling:

Tentative for 3/26/20:
See #12.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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

**United States Bankruptcy Court
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CONT... Richard Paul Herman

Chapter 7

Karen S. Naylor

Movant(s):

Richard Paul Herman

Represented By
Richard P Herman

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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Thursday, March 26, 2020

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 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 1-30-20 per order approving stipulation entered 1-24-20)**

Docket 1

Tentative Ruling:

Tentative for 3/26/20:
See # 12-14.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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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

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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

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
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Thursday, March 26, 2020

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

#16.00 Motion To Dismiss First Amended Adversary Complaint, Or In The Alternative, To Strike Portions
(cont'd from 1-30-20 per order on joint stip. re: stay of adv. action pending ruling on mtn to withdraw reference and req. to cont. pending hrgs entered 1-21-20)

Docket 11

***** VACATED *** REASON: CONTINUED TO MAY 7, 2020 AT 11:00
A.M. PER ORDER ON JOINT STIPULATION ENTERED 2/26/2020**

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

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogeles

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Brendan Loper
Cathrine M Castaldi

Chapter 7

**United States Bankruptcy Court
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Thursday, March 26, 2020

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

#17.00 STATUS CONFERENCE RE: Complaint by Plaintiff: Estate of William L. Seay against Defendant: Thomas H. Casey, Chapter 7 Trustee (cont'd from 1-30-20 per order on joint stip. re: stay of adv. action pending ruling on mtn to withdraw reference and request of cont. pending hearings entered 1-21-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 7, 2020 AT 11:00 A.M. PER ORDER ON JOINT STIPULATION ENTERED 2/26/2020**

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
Kathleen J McCarthy
Brendan Loper

**United States Bankruptcy Court
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Thursday, March 26, 2020

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

#18.00 Evidentiary Hearing Re: Damages Phase Re: Motion For Partial Summary Judgment [Docket No. 361]

Docket 0

***** VACATED *** REASON: OFF CALENDAR - JUDGMENT
APPROVING STIPULATION RE AMOUNT OF DAMAGES IN
CONNECTION WITH ORDER GRANTING COUNTERCLAIMANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT [DOCKET NO. 367]
ENTERED 2-21-20**

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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Hearing Room 5B

2:00 PM

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
Tiffany Payne Geyer

Trustee(s):

Richard A Marshack (TR)

Represented By
Caroline Djang
Cathy Ta
Elizabeth A Green

**United States Bankruptcy Court
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Thursday, March 26, 2020

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

#19.00 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
(con't from 2-27-20 per order approving stip. to cont. s/c hrg entered 1-9-20)

Docket 42

***** VACATED *** REASON: OFF CALENDAR - JUDGMENT
APPROVING STIPULATION RE: AMOUNT OF DAMAGES IN
CONNECTION WITH ORDER GRANTING COUNTERCLAIMANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT [DOCKET NO. 367]
ENTERED 2-21-20**

Tentative Ruling:

Tentative for 12/19/19:

No status report? Do the parties propose waiting on the appeal?

Tentative for 10/24/19:

See #s 9 & 10

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

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Hearing Room

5B

2:00 PM

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

Chapter 11

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
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**

Tuesday, March 31, 2020

Hearing Room 5B

10:30 AM

8:18-11025 Paolo Cardinali

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

JPMORGAN CHASE BANK, N.A.
Vs.
DEBTOR

Docket 44

***** VACATED *** REASON: OFF CALENDAR. CASE DISMISSED ON
3/20/20.**

Party Information

Debtor(s):

Paolo Cardinali

Represented By
Anerio V Altman

Movant(s):

JPMorgan Chase Bank, N.A.

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
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Tuesday, March 31, 2020

Hearing Room 5B

10:30 AM

8:19-12480 Guy S. Griffithe

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY
RE: 2015 Porsche Panamera .

ALTURA CREDIT UNION
Vs.
DEBTOR

Docket 107

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Movant(s):

Altura Credit Union

Represented By
Christian T Kim

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, March 31, 2020

Hearing Room

5B

10:30 AM

8:19-12480 Guy S. Griffithe

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY
RE: 2015 Nissan Altima

ALTURA CREDIT UNION
Vs.
DEBTOR

Docket 108

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Movant(s):

Altura Credit Union

Represented By
Christian T Kim

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, March 31, 2020

Hearing Room 5B

10:30 AM

8:20-10380 John Aquino Gehris

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

BANK OF AMERICA, N.A.

Vs.

DEBTOR

Docket 11

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

John Aquino Gehris

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, March 31, 2020

Hearing Room 5B

10:30 AM

8:17-11435 Kimberlee Ann Fotiades

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-25-20)

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 47

*** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning
Barry E Borowitz

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry
Alexander K Lee
Eric P Enciso

Trustee(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 31, 2020

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5B

10:30 AM

8:17-13437 Michael Edward Partain

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING
Vs.
DEBTOR

Docket 49

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Michael Edward Partain

Represented By
Alon Darvish

Movant(s):

NewRez LLC d/b/a Shellpoint

Represented By
James F Lewin

Trustee(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 31, 2020

Hearing Room 5B

10:30 AM

8:18-10170 John Benjamin Riddle

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

WILIMINGTON SAVINGS FUND SOCIETY, FSB,
Vs.
DEBTOR

Docket 148

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

John Benjamin Riddle

Represented By
Andy C Warshaw

Movant(s):

Wilmington Savings Fund Society,

Represented By
Lemuel Bryant Jaquez

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Wesley H Avery
Wesley H Avery

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

Tuesday, March 31, 2020

Hearing Room

5B

10:30 AM

8:19-10012 Luciana C. Ice

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-21-20)

WELLS FARGO BANK
Vs
DEBTOR

Docket 29

*** VACATED *** REASON: OFF CALENDAR. ORDER FOR RELIEF
FROM STAY ENTERED 2-18-20.

Party Information

Debtor(s):

Luciana C. Ice

Represented By
Rabin J Pournazarian

Movant(s):

WELLS FARGO BANK

Represented By
Sean C Ferry
Eric P Enciso

Trustee(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 31, 2020

Hearing Room 5B

10:30 AM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

**#9.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-21-20)**

WELLS FARGO BANK
Vs.
DEBTOR

Docket 38

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Delia Banuelos De Castillo

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, National

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, March 31, 2020

Hearing Room 5B

10:30 AM

8:19-13089 Carole Ann Meikle

Chapter 11

#10.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 51

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

Movant(s):

U.S. Bank National Association, not

Represented By
Greg P Campbell

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

Tuesday, March 31, 2020

Hearing Room 5B

10:30 AM

8:19-14531 160 Shorewood Drive LLC

Chapter 11

#11.00 Motion for relief from the automatic stay REAL PROPERTY

ARON ABECASSIS, TRUSTEE OF THE ARON ABECASSIS REVOCABLE TRUST DATED 4/14/04; NEAL COHEN, TRUSTEE OF THE NEAL I COHEN RECOVABLE TRUST DATED SEPTEMBER 24, 2018

Vs.

DEBTOR

Docket 25

***** VACATED *** REASON: CONTINUED TO APRIL 28, 2020 AT 10:30 A.M., PER STIPULATION ORDER ENTERED 3/19/2020.**

Party Information

Debtor(s):

160 Shorewood Drive LLC

Represented By
Michael R Totaro

Movant(s):

Aron Abecassis, Trustee of the Aron

Represented By
Julian K Bach

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

Tuesday, March 31, 2020

Hearing Room

5B

10:30 AM

8:20-10252 Yong Su Kyung and Myunghee Kyung

Chapter 7

#12.00 Motion for relief from the automatic stay REAL PROPERTY

LAKEVIEW LOAN SERVICING, LLC, AND ITS SUCCESSORS AND/OR
ASSIGNS
Vs
DEBTORS

Docket 13

*** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT

Party Information

Debtor(s):

Yong Su Kyung

Represented By
Frederick Hoon Jung

Joint Debtor(s):

Myunghee Kyung

Represented By
Frederick Hoon Jung

Movant(s):

Lakeview Loan Servicing, LLC, and

Represented By
Christina J Khil

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 31, 2020

Hearing Room 5B

10:30 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#13.00 Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM

ADAM SELIGMAN
Vs.
DEBTOR

Docket 61

*** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30 A.M. PER COURT

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Movant(s):

Adam Seligman

Represented By
Amy Johnsgard

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, March 31, 2020

Hearing Room 5B

11:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 7

#14.00 Motion by Debtors to Dismiss Case Pursuant to 11 U.S.C. Section 707

Docket 212

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Dale Garfield Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Joint Debtor(s):

Cheryl Lynn Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Movant(s):

Dale Garfield Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Cheryl Lynn Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

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, March 31, 2020

Hearing Room 5B

11:00 AM

8:17-13482 Catherine M Haretakis

Chapter 7

#15.00 First Interim Application for Compensation for Allowance and Payment of Fees and Reimbursement of Expense. Period: 1/7/2019 to 3/9/2020,

Weiland Golden Goodrich LLP, Trustee's Attorney
Fee: \$60,005.00, Expenses: \$1,146.76.

Docket 326

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

Movant(s):

Weiland Golden Goodrich LLP

Represented By
Beth Gaschen

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, March 31, 2020

Hearing Room

5B

11:00 AM

8:15-15801 Joon Han Kim and Soon Ok Kim

Chapter 7

#16.00 Trustee's Final Report And Applicaiton For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

DONALD W. SIEVEKE, ATTORNEY FOR CHAPTER 7 TRUSTEE

PEDERSEN LAW, APC, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

BERKSHIRE HATHAWAY HOME SERVICES, REALTOR FOR TRUSTEE

NEWSTAR REALTY, REALTOR FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, OTHER PROFESSIONAL

FIRST AMERICAN TITLE CORPORATION, OTHER PROFESSIONAL

HOA AND ASSOCIATIONS, OTHER

PICKFORD ESCROW, OTHER

OC TAX COLLECTOR, OTHER

Docket 0

***** VACATED *** REASON: RESCHEDULED FOR 4/1/2020 AT 10:30
A.M. PER COURT**

Party Information

Debtor(s):

Joon Han Kim

Represented By
Arlene M Tokarz
Harlene Miller

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

Tuesday, March 31, 2020

Hearing Room 5B

11:00 AM

CONT... Joon Han Kim and Soon Ok Kim

Chapter 7

Joint Debtor(s):

Soon Ok Kim

Represented By
Arlene M Tokarz
Harlene Miller

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke
Neil Pedersen

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:18-11025 Paolo Cardinali

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 3-31-2020 per court)

JPMORGAN CHASE BANK, N.A.
Vs.
DEBTOR

Docket 44

*** VACATED *** REASON: OFF CALENDAR. CASE DISMISSED ON
3/20/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paolo Cardinali

Represented By
Anerio V Altman

Movant(s):

JPMorgan Chase Bank, N.A.

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**

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY
RE: 2015 Porsche Panamera .
(con't from 3-31-2020 per court)

ALTURA CREDIT UNION
Vs.
DEBTOR

Docket 107

Tentative Ruling:

Tentative for 4/1/20:

Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Movant(s):

Altura Credit Union

Represented By
Christian T Kim

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY
RE: 2015 Nissan Altima
(con't from 3-31-2020 per court)

ALTURA CREDIT UNION
Vs.
DEBTOR

Docket 108

Tentative Ruling:

Tentative for 4/1/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Movant(s):

Altura Credit Union

Represented By
Christian T Kim

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:20-10380 John Aquino Gehris

Chapter 7

**#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 3-31-2020 per court)**

BANK OF AMERICA, N.A.
Vs.
DEBTOR

Docket 11

Tentative Ruling:

Tentative for 4/1/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

John Aquino Gehris 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, April 1, 2020

Hearing Room 5B

10:00 AM

8:17-11435 Kimberlee Ann Fotiades

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-31-2020)**

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 47

Tentative Ruling:

Tentative for 4/1/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/25/20:
Same

Tentative for 2/4/20:
Grant unless APO. The court is not sympathetic on post-petition, post-confirmation defaults.

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... Kimberlee Ann Fotiades

Chapter 13

Party Information

Debtor(s):

Kimberlee Ann Fotiades

Represented By
Heather J Canning
Barry E Borowitz

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry
Alexander K Lee
Eric P Enciso

Trustee(s):

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 1, 2020

Hearing Room 5B

10:00 AM

8:17-13437 Michael Edward Partain

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-31-2020 per court)**

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING
Vs.
DEBTOR

Docket 49

Tentative Ruling:

Tentative for 4/1/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Michael Edward Partain

Represented By
Alon Darvish

Movant(s):

NewRez LLC d/b/a Shellpoint

Represented By
James F Lewin

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... Michael Edward Partain

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 1, 2020

Hearing Room 5B

10:00 AM

8:18-10170 John Benjamin Riddle

Chapter 7

**#7.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-31-2020 per court)**

WILIMINGTON SAVINGS FUND SOCIETY, FSB,
Vs.
DEBTOR

Docket 148

Tentative Ruling:

Tentative for 4/1/20:

Continue for notice to junior lienholders. Regarding opposition, the court would be more impressed if the Trustee, the primary party in interest were to oppose.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

John Benjamin Riddle

Represented By
Andy C Warshaw

Movant(s):

Wilmington Savings Fund Society,

Represented By
Lemuel Bryant Jaquez

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... John Benjamin Riddle

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Wesley H Avery
Wesley H Avery

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

**#8.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-31-2020)**

WELLS FARGO BANK
Vs.
DEBTOR

Docket 38

Tentative Ruling:

Tentative for 4/1/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Grant unless lender confirms debtor is current or APO.

Party Information

Debtor(s):

Delia Banuelos De Castillo

Represented By
Christopher J Langley

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... Delia Banuelos De Castillo

Chapter 13

Movant(s):

Wells Fargo Bank, National

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**

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:19-10012 Luciana C. Ice

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-31-2020)

WELLS FARGO BANK
Vs
DEBTOR

Docket 29

*** VACATED *** REASON: OFF CALENDAR. ORDER FOR RELIEF
FROM STAY ENTERED 2-18-20.

Tentative Ruling:

Grant unless APO.

Party Information

Debtor(s):

Luciana C. Ice

Represented By
Rabin J Pournazarian

Movant(s):

WELLS FARGO BANK

Represented By
Sean C Ferry
Eric P Enciso

Trustee(s):

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 1, 2020

Hearing Room

5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

**#10.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-31-2020 per court)**

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 51

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION FOR RELIEF STAY ENTERED 3-25-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

Movant(s):

U.S. Bank National Association, not

Represented By
Greg P Campbell

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:20-10252 Yong Su Kyung and Myunghee Kyung

Chapter 7

**#11.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-31-2020 per court)**

LAKEVIEW LOAN SERVICING, LLC, AND ITS SUCCESSORS AND/OR
ASSIGNS
Vs
DEBTORS

Docket 13

Tentative Ruling:

Tentative for 4/1/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Yong Su Kyung

Represented By
Frederick Hoon Jung

Joint Debtor(s):

Myunghee Kyung

Represented By
Frederick Hoon Jung

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... Yong Su Kyung and Myunghee Kyung

Chapter 7

Movant(s):

Lakeview Loan Servicing, LLC, and

Represented By
Christina J Khil

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#12.00 Motion for relief from the automatic stay ACTION IN NONBANKRUPTCY FORUM
(con't from 3-31-2020 per court)

ADAM SELIGMAN
Vs.
DEBTOR

Docket 61

Tentative Ruling:

Tentative for 4/1/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Movant(s):

Adam Seligman

Represented By
Amy Johnsgard

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

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

CONT... Deborah Jean Hughes

Chapter 7

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**

Wednesday, April 1, 2020

Hearing Room 5B

10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 7

#13.00 Chapter 7 Trustee's Motion For Order Authorizing Trustee to Continue to Operate Debtor's Business Pursuant to 11 U.S.C. Section 721, Use Property of the Estate Pursuant to 11 U.S.C. Sections 363(b)(1) and (c)(1), and Pay Necessary Expenses
(OST Signed 3-27-20)

Docket 245

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad

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

Wednesday, April 1, 2020

Hearing Room 5B

11:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 7

**#14.00 Motion by Debtors to Dismiss Case Pursuant to 11 U.S.C. Section 707
(con't from 3-31-2020 per court)**

Docket 212

Tentative Ruling:

Tentative for 4/1/20:

This is Debtors Dale and Cheryl Knox's ("Debtors") motion to voluntarily dismiss their chapter 7 case pursuant to 11 U.S.C. §707. The motion has drawn limited opposition from creditors Warren Deutsch and Allen Weingarten (holders of a second deed of trust on 857 Avenida Acapulco, San Clemente, CA 92672), creditor TSC Restoration, Inc. and from the Internal Revenue Service. The chapter 7 Trustee, Karen Sue Naylor, does not oppose the motion.

The parties agree that dismissal is permissible but disagree on the terms. Debtors want to dismiss the case with no bar to re-filing, but creditors Deutsch and Weingarten argue that a bar of 180 days is warranted under 11 U.S.C. §109(g)(2), although they concede that imposition of such a bar is discretionary in the Ninth Circuit. Creditor TSC Restoration asks the court to include in any dismissal order language that would preclude Debtors from receiving the standard chapter 7 discharge in the case. TSC argues that Debtors have been enjoying the protections provided by the code while spending lavishly to support their lifestyle, all at the expense of creditors like TSC.

Finally, the IRS's objects to dismissal because it has been investigating certain tax issues with Debtors and would like the case to remain open to resolve those matters. These matters will likely be resolved

**United States Bankruptcy Court
Central District of California
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Wednesday, April 1, 2020

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5B

11:00 AM

CONT... **Dale Garfield Knox and Cheryl Lynn Knox**

Chapter 7

through an evidentiary hearing that is currently set for July 16, 2020. The IRS argues that it has spent many months preparing its case against Debtor and considerations of judicial economy support leaving the case open for the limited purpose of allowing the IRS to finish its portion of the case. In support of this argument, the IRS cites *In re Bartee*, 317 B.R. 362 (9th Cir. BAP 2004) for the proposition that in the Ninth Circuit, "a voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no 'legal prejudice' to interested parties. (citing from *In re Leach*, 130 B.R. 855, 857 n.5 (9 Cir. BAP 1991)). Debtors have the burden of showing that there will be no legal prejudice to any party if dismissal is granted. *Id.* IRS argues that Debtors have not demonstrated that no legal prejudice would accrue to the IRS if the case is dismissed. Debtors do suggest in their motion that the IRS issue can likely be resolved outside of the bankruptcy court or even later if and when Debtors re-file, but particulars are left very vague.

The oppositions raise some legitimate points. It should not need stating that bankruptcy proceedings are not to be viewed as an "on/off" switch flipped at the discretion of debtors, nor are bankruptcy proceedings only about the interests of debtors; creditors matter too. Any potential dismissal order will include specific language prohibiting a Chapter 7 discharge (or vacating one if inadvertently already entered), which appears to be what TSC is mainly concerned about. The bar on re-filing is a closer question even though other circuits make a 180-day bar mandatory in cases such as this. Creditors Deutsch and Weingarten assert that they have only received 4 post-petition deed of trust payments even though this case has been pending almost two years. The court does recall that the issue of lavish payments to maintain lifestyle reported in the MORs has been raised before which makes the question focused as one of balancing and fairness. Stated sternly, why should the debtors enjoy the protection of the stay for a period of two years, making little tangible progress toward the stated resolution of the IRS claim, not pay their secured creditors all the while enjoying an unimpeded lifestyle? What's past is past now, but that does not mean the court should welcome an

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CONT... Dale Garfield Knox and Cheryl Lynn Knox
immediate repeat of this exercise.

Chapter 7

The question of equitable balance also ties to the last question. Given the reported active involvement of the IRS in this case so far, and the uncertainty surrounding the availability of courts generally in the current COVID-19 crisis, this court is likely as good a place as any to maintain jurisdiction over the tax claims, especially to conserve judicial resources and avoid concerns over legal prejudice. Moreover, resolution of the IRS claim has always been stated as the main point of the entire proceeding (and likely of any repeat filing). IRS says it is ready or nearly so to present its case July 16, 2020 concerning the disputed exemptions in order to achieve a final number. Thus, the case should remain open for the limited purpose of adjudicating the IRS tax claim and then, following an order allowing the claim in the portion adjudicated as correct, dismiss with a bar to refile for a period of 180 days (absent a showing of urgency by separate motion). That approach appears a better balance of interests and less of an offense against equity.

Grant on modified terms, reserving jurisdiction for adjudication of the IRS claim and with 180-day bar which can be relaxed upon motion showing justification and emergency.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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Wednesday, April 1, 2020

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11:00 AM

CONT... Dale Garfield Knox and Cheryl Lynn Knox

Chapter 7

Party Information

Debtor(s):

Dale Garfield Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Joint Debtor(s):

Cheryl Lynn Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Movant(s):

Dale Garfield Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Cheryl Lynn Knox

Represented By
Andy C Warshaw
Richard L. Sturdevant

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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8:15-15801 Joon Han Kim and Soon Ok Kim

Chapter 7

**#15.00 Trustee's Final Report And Applicaiton For Compensation:
(con't from 3-31-2020 per court)**

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

DONALD W. SIEVEKE, ATTORNEY FOR CHAPTER 7 TRUSTEE

PEDERSEN LAW, APC, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

BERKSHIRE HATHAWAY HOME SERVICES, REALTOR FOR TRUSTEE

NEWSTAR REALTY, REALTOR FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, OTHER PROFESSIONAL

FIRST AMERICAN TITLE CORPORATION, OTHER PROFESSIONAL

HOA AND ASSOCIATIONS, OTHER

PICKFORD ESCROW, OTHER

OC TAX COLLECTOR, OTHER

Docket 0

Tentative Ruling:

Tentative for 4/1/20:

The court is left very unclear on the status of the claim for professional fees of Pedersen Law. There appears to have been \$842,000 paid. But if a final allowance is being sought here, no showing is made justifying this amount. Moreover, reference is made in Trustee's report over a disagreement.

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CONT... Joon Han Kim and Soon Ok Kim

Chapter 7

The court is mindful of its order of January 7, 2020 allowing interim fees, but one presumes that final allowance is now being sought. It looks like the \$842,000 was part of a settlement of which the estate netted \$75,000 after a \$25,000 fee award was deducted. But the court should not be left with the task of combing the record trying to determine what happened in a final report and allowance request.

No tentative as to Marshack and Pedersen. Hahn Fife fees and costs allowed as prayed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Joon Han Kim

Represented By
Arlene M Tokarz
Harlene Miller

Joint Debtor(s):

Soon Ok Kim

Represented By
Arlene M Tokarz
Harlene Miller

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke

**United States Bankruptcy Court
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11:00 AM

CONT...

Joon Han Kim and Soon Ok Kim

Neil Pedersen

Chapter 7

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:17-13482 Catherine M Haretakis

Chapter 7

#16.00 First Interim Application for Compensation for Allowance and Payment of Fees and Reimbursement of Expense. Period: 1/7/2019 to 3/9/2020, **(con't from 3-31-2020 per court)**

Weiland Golden Goodrich LLP, Trustee's Attorney
Fee: \$60,005.00, Expenses: \$1,146.76.

Docket 326

Tentative Ruling:

Tentative for 4/1/20:

Allow as prayed contingent on submission of "no objection" declaration from the Trustee as required by the LBRs with the order. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

Movant(s):

Weiland Golden Goodrich LLP

Represented By
Beth Gaschen

**United States Bankruptcy Court
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11:00 AM

CONT... Catherine M Haretakis

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:19-14307 Roadking Trucking, LLC

Chapter 11

Adv#: 8:19-01223 Roadking Trucking, LLC v. Alvarado et al

**#17.00 Motion for Summary Judgment
(rescheduled from 4-2-2020 per court)**

Docket 11

Tentative Ruling:

Tentative for 4/1/20:

In view of the non-opposition filed by creditors Alvarado, et al., and based on the obvious points as raised in the motion, the motion is granted.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

Defendant(s):

Ana Vasquez

Represented By
Michael Jenkins

Luis Solorzano

Represented By
Michael Jenkins

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CONT... Roadking Trucking, LLC

Chapter 11

Wilber Sandoval	Represented By Michael Jenkins
Ricardo Roman	Represented By Michael Jenkins
Marco Rojas	Represented By Michael Jenkins
Bernardino Rojas	Represented By Michael Jenkins
Edson Reyes	Represented By Michael Jenkins
Gregorio Ramirez	Represented By Michael Jenkins
Mariano Montano	Represented By Michael Jenkins
Edgar J. Reyes Mendoza	Represented By Michael Jenkins
Cruz Mendoza	Represented By Michael Jenkins
Edwin Majano	Represented By Michael Jenkins
Victor Loasigas	Represented By Michael Jenkins
Adolfo Hernandez	Represented By Michael Jenkins
Agustin Gutierrez	Represented By Michael Jenkins
Rafael Ramos-Funes	Represented By Michael Jenkins
Carlos Estrada	Represented By

**United States Bankruptcy Court
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11:00 AM

CONT... Roadking Trucking, LLC

Chapter 11

Michael Jenkins

Carlos Delgado

Represented By
Michael Jenkins

Luis Carranza

Represented By
Michael Jenkins

Abner Aparicio

Represented By
Michael Jenkins

Lucy Alvarado

Represented By
Michael Jenkins

Jose Andres Majano

Represented By
Michael Jenkins

Movant(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

Plaintiff(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-14433 Joseph George Taylor

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

A-L FINANCIAL CORP.
Vs.
DEBTOR

Docket 18

Tentative Ruling:

Tentative for 4/8/20:

Grant. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Joseph George Taylor

Represented By
Richard L. Sturdevant

Trustee(s):

**United States Bankruptcy Court
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10:00 AM

CONT... **Joseph George Taylor**
Weneta M Kosmala (TR)

Pro Se

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY
[Re: 2017 BMW 4 Series 440i Coupe 2D]**

FINANCIAL SERVICES VEHICLE TRUST
Vs.
DEBTOR

Hearing

RE: [97] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 BMW 4 Series 440i Coupe 2D . (Skigin, Cheryl)

Docket 97

Tentative Ruling:

Tentative for 4/8/20:

Grant. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Financial Services Vehicle Trust

Represented By
Cheryl A Skigin

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:20-10298 Closure Corporation

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FORD MOTOR CREDIT COMPANY LLC
Vs.
DEBTOR

Docket 6

Tentative Ruling:

Tentative for 4/8/20:

Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Closure Corporation

Represented By
Mark A Pahor

Movant(s):

Ford Motor Credit Company LLC

Represented By
John H Kim

**United States Bankruptcy Court
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Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... Closure Corporation

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-25-20)**

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS

Docket 47

Tentative Ruling:

Tentative for 4/8/20:
Grant unless and APO is stipulated. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/25/20:
Grant unless current or APO.

Party Information

**United States Bankruptcy Court
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Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... Walter Quiroz and Carmen Quiroz

Chapter 13

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Movant(s):

U.S. Bank National Association

Represented By
Sean C Ferry
Eric P Enciso

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 8, 2020

Hearing Room 5B

10:00 AM

8:19-13000 Dale Grabinski

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-10-20)

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 48

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOVANT'S MOTION FOR RELIEF FROM AUTOMATIC
STAY FILED 3-24-20**

Tentative Ruling:

Tentative for 3/10/20:
Same.

Tentative for 2/11/20:
Deny if Movant confirms Debtor is current.

Party Information

Debtor(s):

Dale Grabinski

Represented By
Christopher J Langley

Movant(s):

JPMorgan Chase Bank, National

Represented By
Nancy L Lee
Kristin A Schuler-Hintz

Trustee(s):

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 8, 2020

Hearing Room 5B

10:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

Adv#: 8:19-01197 Commonwealth Land Title Insurance Company v. Nguyen

**#6.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
Under 11 USC Section 523
(rescheduled from 4-9-2020 per court)**

Docket 1

Tentative Ruling:

Tentative for 4/8/20:

What is the status? Has a prove-up been done? Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 12/19/19:

Schedule prove up?

Party Information

Debtor(s):

Stephen Nguyen

Represented By
Daniel King

**United States Bankruptcy Court
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Santa Ana
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Hearing Room 5B

10:00 AM

CONT... Stephen Nguyen

Chapter 7

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

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

Wednesday, April 8, 2020

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.

#7.00 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)
(rescheduled from 4-9-2020 per court)

Docket 6

***** VACATED *** REASON: CONTINUED TO 5/6/20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING
ORDER ENTERED 3-30-20**

Tentative Ruling:

Tentative for 10/8/15:
Deadline for completing discovery: June 1, 2016
Last date for filing pre-trial motions: June 20, 2016
Pre-trial conference on: July 7, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

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

Defendant(s):

Anna's Linens, Inc.

Pro Se

Plaintiff(s):

Linda Martz-Gomez

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Gail L Chung
Jack A Raisner
Rene S Roupinian

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Michael J Hauser

**United States Bankruptcy Court
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Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

**#8.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual
(cont'd from 1-22-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 10:00 A.M.
PER ORDER ENTERED 3-25-20**

Tentative Ruling:

Tentative for 1/22/20:
Continue to coincide with UST's motion.

Tentative for 1/8/20:
Continue to January 22, 2020 to coincide with dismissal/conversion motion.

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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Wednesday, April 8, 2020

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10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

#9.00 Motion by United States Trustee to Convert Case to Chapter 7 or Dismiss Pursuant to 11 U.S.C. Section 1112(b)
(cont'd from 1-22-20)

Docket 31

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 10:00 A.M.
PER ORDER ENTERED 3-25-20**

Tentative Ruling:

Tentative for 1/22/20:

The court will determine whether, based on timely MORs, there is enough regular income to support a plan. Failure to demonstrate this ability, or any further delinquency on filing of MORs, will likely result in granting the motion.

Continue for 60-75 days per Trustee's suggestion.

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

Movant(s):

United States Trustee (SA)

Represented By
Michael J Hauser

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

#10.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 3-17-20)

AMERICREDIT FINANCIAL SERVICES, INC.
Vs.
DEBTOR

Docket 62

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER ENTERED 4-02-20**

Tentative Ruling:

Tentative for 4/8/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/17/20:

Grant unless APO. The opposition fails to show how this collateral is necessary to a reorganization, or that the reorganization represented by the exhibit is "in prospect." This is Debtor's burden. On the other hand, an APO for a period pending confirmation would suffice. Is such an agreement to adequate protection imminent?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic

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10:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

**United States Bankruptcy Court
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10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#11.00 STATIS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 2-05-19)**

Docket 1

Tentative Ruling:

Tentative for 4/8/20:

No status report filed? See #12 and #13. Continue to coincide with confirmation hearing. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/5/20:

Continue status conference. Continue approximately 60 days to allow analysis of plan and disclosure statement due 2/28/20.

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.

Party Information

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

#12.00 Motion For Order Approving Chapter 11 Disclosure Statement As Containing Adequate Information Pursuant To Bankruptcy Code Section 1125(A)(1)(B).

Docket 66

Tentative Ruling:

Tentative for 4/8/20:

The purpose of a disclosure statement is "to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan." Duff v. U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996). "Adequate information" is defined under 11 U.S.C. Sec. 1125(a)(1) as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interest of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan."

Bryson's objections notwithstanding (though feasibility seems questionable), the DS appears to provide adequate information. It is also worth noting that the DS has not drawn any other opposition. The plan may ultimately not be confirmable if feasibility proves too speculative, as it very well might be given the current economic climate, or if cramdown is attempted and the value of the rental properties is too low as Bryson has alleged, suggesting that creditors will do better in a liquidation (the so-called best interest of creditors test). Debtor will have the burden on these issues in order to achieve confirmation, but at this stage, the DS does not appear deficient from an *information* standpoint, especially with the detailed risk factors analysis.

Grant. Set confirmation date and deadlines.

Appearance is optional.

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#13.00 Motion to Use Cash Collateral
(cont'd from 2-05-19)**

Docket 5

Tentative Ruling:

Tentative for 4/8/20:

Continue on same terms pending confirmation hearing. Appearance is optional.

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Tentative for 2/5/20:

Continue use on same terms pending continued status conference.

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?

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT...

Rosemaria Geraldine Altieri

Misty A Perry Isaacson

Chapter 11

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#13.10 Amended Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 3-24-20)

JONATHAN BALL
Vs
DEBTOR

Docket 481

Tentative Ruling:

Tentative for 4/8/20:

Status? As stated in earlier hearings the court is inclined to remove the stay 60 days out (now down to 45) unless the Trustee articulates a compelling reason to continue the delay. If there is to be no or minimal dividend anyway, the court fails to see the waste of resources argument. In any event, the Trustee cannot expect to hold everyone else up while he makes up his mind. The parties were reportedly exploring a stipulation; so, where are we?

Appearance is optional.

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Tentative for 3/24/20:

The movant wants to proceed with trial in New Jersey although he has filed a proof of claim which, absent objection, would be allowed as a matter of course. Complicating matters is a reported affirmative defense / cross-claim. Trustee is uncertain whether there will be a dividend in the case making engagement of counsel likely a waste of resources. The problem arises in that Trustee does not want to take a definitive position, and that is problematic as we cannot detain the other parties indefinitely or unnecessarily.

Grant effective 60 days from entry of this order unless the Trustee affirmatively seeks an extension of the stay. Only liquidation of claims is allowed in any case, no levies absent further order.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Movant(s):

Jonathan Ball

Represented By
Richard T Baum

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**

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

David Wood

Chapter 7

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Global Approach, Inc. et al v. Rock Star Beverly Hills LLC et al

#13.20 Notice of Removal of Civil Action to United States Bankruptcy Court

Docket 1

Tentative Ruling:

Tentative for 4/8/20:

If the court understands correctly, it is Plaintiff's wish to remain in the Bankruptcy Court and proceed to default and default prove-up. There appears to be no reason not to do this since, unlike contested matters where the court is deferential to sister courts, especially when the proceedings are well-advanced and other non-debtor parties are actively involved, none of those issues pertain here. But there is a large standing issue. Such matters as these belong not to the prosecuting plaintiff alone but to the estate once a bankruptcy is filed. Consequently, the court expects the Plaintiff to contact the Trustee and make suitable arrangements about matters including: (1) continued representation and employment of counsel; (2) substitution of real party in interest and (3) language of the default judgment, findings and evidence to be submitted in support.

The OSC is satisfied and discharged, and the matter will be continued about 60 days as a status conference.

Appearance is optional.

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:

Why should the court not remand? The court is also interested to know if the Chapter 7 Trustee intends to intervene as real party in interest. Continue for these answers.

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Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

Plaintiff(s):

Global Approach, Inc.

Represented By
Alan W Forsley
Bobby Benjy

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

Wednesday, April 8, 2020

Hearing Room 5B

10:00 AM

CONT... **Igor Shabanets**
Remares Global, LLC

Represented By
Alan W Forsley
Bobby Benjy

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**

Wednesday, April 8, 2020

Hearing Room

5B

11:00 AM

8:19-12162 John Louis Katangian and Shelline Marie Katangian

Chapter 7

#14.00 Final Fee Application for Compensation for Final Fees and/or Expenses
Debtor's Attorney, Period: 6/9/2019 to 11/6/2019

Michael R Totaro, Totaro & Shanahan

FEE: \$40,150.00

EXPENSES: \$0.00

Docket 100

Tentative Ruling:

Tentative for 4/8/20:

Allow as prayed assuming the discrepancy between date application was signed and filed can be explained. Payment from retainers authorized but otherwise as Chapter 7 trustee deems prudent.

Appearance is optional.

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Party Information

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

CONT... John Louis Katangian and Shelline Marie Katangian

Chapter 7

Debtor(s):

John Louis Katangian

Represented By
Michael R Totaro

Joint Debtor(s):

Shelline Marie Katangian

Represented By
Michael R Totaro

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, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#15.00 Motion to Approve Compromise of Administrative Expense Claim Pursuant to Federal Rule of Bankruptcy Procedure 9019(a)

Docket 501

Tentative Ruling:

Tentative for 4/8/20:
Grant. Appearance optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the 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
Tinho Mang

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

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

Chapter 11

**#16.00 Post-Confirmation Status Conference Re: Chapter 11 Plan Of Reorganization
(set at confirmation hrg. held 10-23-19)**

Docket 36

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR ORDER CLOSING CASE ON INTERIM BASIS
ENTERED 3-20-20**

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.

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 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
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#17.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363
(cont'd from 1-22-20)

Docket 7

Tentative Ruling:

Tentative for 4/8/20:

Debtor filed an amended motion for use of cash collateral on 4/1/20. Unfortunately, this amended motion is likely untimely because there is nearly no time for any other party to respond before the hearing date on 4/8. In any case, the new amended motion does not appear to address Banc of California's objections to continued use of cash collateral. Therefore, the amended motion should be continued to allow creditors, including Banc of California, adequate time to respond. In the meantime, Debtor should answer Banc of California's allegations of misusing cash collateral.

Continue for about two weeks on same terms. Debtor to address Banc Of California's points. Appearance is optional.

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

Tentative for 1/22/20:
Continue same terms until April 8, 2020 at 10:00 a.m.

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
Courtroom 5B Calendar**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

#18.00 Motion for Order Compelling Alice Willer-Zelden, as Trustee of the Alice Willer-Zelden Trust, to Turnover Property of the Estate Pursuant to 11 U.S.C. §§ 105(A), 541(A) and 542

Docket 111

Tentative Ruling:

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, April 8, 2020

Hearing Room 5B

11:00 AM

8:20-10792 Bradley Burge Mugar, Jr

Chapter 13

#19.00 Show Cause Hearing Why Case Should Not Be Dismissed RE Chapter 7
Debtor(s) received a discharge in a Chapter 12 or 13 case filed within 6 years of
the filing of pending case (11 U.S.C. Section 727(a)(9)). Prior Case No.
8:10-19560-TA Chapter 7 filed 7/13/20. Request for waiver of Credit Counseling
required (Exigent Circumstances)
(con't from 4-7-2020 per court)

Docket 0

Tentative Ruling:

Tentative for 4/8/20:
Dismiss. Appearance is optional.

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to implement physical distancing, and pursuant to GO 20-02, telephonic
appearances are mandatory on all matters. Telephonic appearances may be
arranged with CourtCall by calling (866) 582-6878.

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pro se or self-represented litigants through April 30, 2020.

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accessible during the hearing.

Party Information

Debtor(s):

Bradley Burge Mugar 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, April 8, 2020

Hearing Room 5B

11:00 AM

8:18-10762 Jack Richard Finnegan

Chapter 7

#20.00 United States Trustee's Fourth Motion for an Order Extending the Deadline for the United States Trustee to File Complaints Objecting to Discharge Under and Pursuant to 11 U.S.C. Section 727 and FRBP 4004(b)(1).
(cont'd from 4-7-20)

Docket 295

Tentative Ruling:

Tentative for 4/8/20:
Grant. Appearance is optional.

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Party Information

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**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:18-13362 Shelley M Spear

Chapter 7

#21.00 United States Trustee's Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(8)
(cont'd from 4-7-20)

Docket 72

Tentative Ruling:

Tentative for 4/8/20:

Here, the Debtor filed her 2018 Chapter 13 Case on September 10, 2018 which then converted to a Chapter 7 Case on February 20, 2020. Under section 348(a) of the Bankruptcy Code the conversion of a case does not effect a change in the date of the filing of the petition. Thus, the filing date of the current chapter 7 case is September 10, 2018. Previously, the Debtor filed a Chapter 7 case on September 9, 2011, and in that Chapter 7 case received a discharge on December 27, 2011. The present case was filed on September 10, 2018 well within the prohibited eight-year period. Therefore, the Debtor is precluded from obtaining a discharge in her current bankruptcy case. Accordingly, the Court should deny Debtor's discharge in the 2018 Case pursuant to §727(a)(8).

Grant. Appearance is optional.

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Party Information

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

CONT... Shelley M Spear

Chapter 7

Debtor(s):

Shelley M Spear

Represented By
Sunita N Sood

Movant(s):

United States Trustee (SA)

Represented By
Frank Cadigan

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:18-13608 Darren Dean McGuire

Chapter 7

#22.00 Motion for Approval of Compromise Between the Trustee, United States Fire Insurance Company and Kevin Ogar
(cont'd from 4-7-20)

Docket 107

Tentative Ruling:

Tentative for 4/8/20:

This is the Motion for Approval of Compromise Between the Trustee, Richard Marshack, United States Fire Insurance Company, and Kevin Ogar brought pursuant to FRBP 9019(a). The motion was initially opposed by Jeffrey R. Wilson and WIBA Insurance Agency, Inc., but the opposition has been apparently resolved by a stipulation filed on March 30, 2020, which is still pending approval.

The salient terms of the proposed compromise agreement are as follows:

1. The Agreement is conditioned upon Bankruptcy Court approval. See Ex. 1 at 10, § 9.
2. US Fire shall pay the Estate Five Thousand (\$5,000) within fourteen (14) business days after the "Settlement Effective Date" (as defined in the Agreement). See Ex. 1 at 8-9, § 3.
3. US Fire shall pay Ogar Seven Hundred Fifty Thousand (\$750,000) within fourteen (14) business days after the Settlement Effective Date. See Ex. 1 at 8, § 3.
4. The Trustee and Ogar covenant, represent and warrant that any and all alleged claims against US Fire were abandoned, were property of McGuire at the time of the settlement between McGuire and US Fire, and were released by such settlement. The Trustee, Ogar, and any party claiming by or through the Estate will not seek to set aside the abandonment of any alleged claims

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

Wednesday, April 8, 2020

Hearing Room

5B

11:00 AM

CONT...

Darren Dean McGuire

Chapter 7

against US Fire or to set aside or disturb the settlement between US Fire and McGuire. See Ex. 1 at 7-8, § 2.

5. Ogar's proof of claim in this case shall be reduced on a dollar-for-dollar basis by the amounts he is to receive from US Fire in connection with the Agreement. See Ex. 1 at 8, § 3.

6. The Trustee will use his best efforts to prosecute the Debtor's claims against Jeffrey R. Wilson, WIBA Insurance Agency, and all other claims that could have been brought against them in the Coverage Action (and excluding any claims alleged against US Fire). The Trustee has also agreed to consider seeking the authority to employ Taylor-Copeland Law to prosecute any such claims. See Ex. 1 at 9, § 5.

7. As described in the Agreement and subject to the express exceptions in the Agreement, the Trustee and Ogar are releasing claims against US Fire, Ogar is releasing claims against the Trustee, and the Trustee and US Fire are releasing claims against Ogar. See Ex. 1 at 4-7, § 1.

8. Without limiting any exceptions to the releases in the Agreement, the Agreement does not release claims against the Brokers or McGuire and does not have any effect on US Fire's rights against the Brokers. See Ex. 1 at 9-10, §§ 4, 6 & 7.

The compromise agreement appears to be fair and equitable. The motion's analysis of the *A&C Properties* factors is detailed and well-reasoned. Even before the stipulation resolving the opposition was filed, the opposition stated that it did not disagree with the motion's analysis of the *A&C Properties* factors. There is no opposition by any other interested party. Therefore, the compromise agreement should be approved, and the motion granted, pending approval of the stipulation filed March 30 (dkt. #116), which approval seems very likely.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

CONT... Darren Dean McGuire Chapter 7

appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Darren Dean McGuire

Represented By
Dean G Rallis Jr
Matthew D Pham

Movant(s):

Jeffrey I Golden (TR)

Represented By
Steven T Gubner
Michael W Davis
Jason B Komorsky

Trustee(s):

Jeffrey I Golden (TR)

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**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:20-10441 Scot Matteson

Chapter 7

**#23.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against an Individual
(cont'd from 4-07-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4/22/20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION TO CONTINUE
STATUS CONFERENCE ENTERED 4-03-20**

Tentative Ruling:

Tentative for 3/10/20:

The timing in this case is muddled because two summons were issued and the deadline to respond to the reissued summons is after the hearing on the status conference in this case. It might be best to continue this status conference to March 17, 2020 at 10:00 a.m. so that the court can evaluate any response that is filed. If no response is received, the order for relief should be entered.

Party Information

Debtor(s):

Scot Matteson

Pro Se

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-12320 John Gerard Bolduc

Chapter 7

#24.00 Chapter 7 Trustee's Motion for Order Disallowing Claim No. 2-2 filed by ACAR Leasing LTD D/B/A GM Financial Leasing
(cont'd from 4-7-20)

Docket 30

Tentative Ruling:

Tentative for 4/8/20:
Allow as secured claim only, not entitled to distribution from estate.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

John Gerard Bolduc

Represented By
Kevin J Kunde

Movant(s):

Karen S Naylor (TR)

Pro Se

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

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

CONT... John Gerard Bolduc

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**

Wednesday, April 8, 2020

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. 51 Filed By Lakeview Loan Servicing, LLC (cont'd from 4-07-20)

Docket 249

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A,M,
PER ORDERED ENTERED 3-20-20**

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**

Wednesday, April 8, 2020

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 (cont'd from 4-07-20)

Docket 255

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 3-20-20**

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**

Wednesday, April 8, 2020

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. 68 Filed By Ditech Financial, LLC
(cont'd from 4-07-20 per court's own mtn)

Docket 261

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 3-20-20**

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

Wednesday, April 8, 2020

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. (cont'd from 4-07-20)

Docket 257

*** VACATED *** REASON: Order Approving Stipulation Between Lexington National Insurance Corporation and Caliber Home Loans, Inc. Resolving the Objection to and Motion to Disallow Proof of Claim No. 64 Entered on 3/26/2020

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**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#29.00 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
(cont'd from 4-07-20)

Docket 256

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 3-26-20**

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**

Wednesday, April 8, 2020

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. 54 Filed By Lakeview Loan Servicing, LLC (cont'd from 4-07-20)

Docket 252

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 3-20-20**

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**

Wednesday, April 8, 2020

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. 53 Filed By Lakeview Loan Servicing, LLC
(cont'd from 4-07-20)

Docket 251

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 3-20-20**

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**

Wednesday, April 8, 2020

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. 52 Filed By First Federal Bank of Florida
(cont'd from 2-25-20 per order approving stip. re: claim no. 52 entered 2-11-20)

Docket 250

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 3-20-20**

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**

Wednesday, April 8, 2020

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. 32-2 Filed By HMC Assets, LLC, As Trustee Of Cam XV Truste
(cont'd from 4-07-20)

Docket 245

*** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER APPROVING CLAIM NO, 32-2 AND CLAIM NO 70
ENTERED 4-06-20

Tentative Ruling:

Tentative for 2/25/20:

These nominally are characterized as claims objections. The main disputed issue common to Calendar #s 11, 25, and 28 (which are discussed in a single memorandum because they overlap) are the amounts of the allowable portions of the claims as it appears these claims include accrued interest (and perhaps fees) to which they may not be entitled. Lexington National Insurance Corporation ("Lexington"), one of several surety companies that provided Foreclosure Bonds for foreclosure sales conducted by Debtor in Maryland and Washington D.C. has filed numerous objections to claims against Debtor's estate. The curiosity arises from the fact that several of the claimants have agreed to continue the hearing scheduled for February 25, out to April 7, which explains why so many matters are vacated in this case. However, three creditors, HMC Assets, LLC, as Trustee of the CAM XV Trust (Claim# 32-2), Select Portfolio Servicing, Inc. (Claim #67), and Carrington Mortgage Services (Claim #70) have decided to press ahead in defending their claims, arguing that they are entitled to the entirety of their claims, even though Lexington has made a fairly compelling argument that they are only entitled to a portion of them, as will be discussed further below.

The BP Fisher Law Group, LLP ("Debtor") was a law firm that was

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

Wednesday, April 8, 2020

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11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

primarily in the business of handling residential foreclosures in the Mid-Atlantic region. The Trust Fund Claims (as defined below) that are the subject of the Trust Fund (as defined below) and payment by the Chapter 7 Trustee pursuant to the Trust Fund Settlement (as defined below) arise out of foreclosures conducted by Debtor which allegedly resulted in Debtor receiving monies in trust that it allegedly failed to remit to the appropriate parties.

In connection with the foreclosure sales that were handled by Debtor, there are two types of parties who may possess claims arising out of the alleged misappropriation of foreclosure sale trust fund monies that were held by Debtor: (A) a Buyer who provided a Buyer Deposit to Debtor when the closing on the foreclosure sale did not actually take place for reasons not related to the Buyer's default (i.e., the Buyer Deposit was not returned to them); and (B) a lender in connection with foreclosures sales where a closing took place, an Auditor's Report was ratified, and Debtor did not disburse the net foreclosure sale trust fund monies as required by the ratified Auditor's Report.

Lexington's argues that the trust fund claims are limited to actual trust fund monies that were remitted to Debtor but not paid to rightful claimants. The Buyers are only entitled to a trust fund claim in the exact amount of the Buyer Deposit that was not returned and a lender is only entitled to a trust fund claim in the exact amount of trust fund monies that were not paid to it as set forth in the Foreclosure Court's order ratifying the Auditor's Report. Claimants are not entitled to trust fund claims for any other alleged damages or claims (i.e., no interest, attorney's fees, etc.) – their trust fund claims are limited to the exact amount of trust fund monies that were received by Debtor and later were supposed to be delivered to them. In other words, there is a difference between a genuine trust fund claim, which by its definition is limited to a certain fund misappropriation, and consequential damages claims

**United States Bankruptcy Court
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11:00 AM

CONT... BP Fisher Law Group, LLP
against the Debtor.

Chapter 7

On July 19, 2019, several months after Debtor filed its petition, the Chapter 7 Trustee (formerly Chapter 11 Trustee (the "Trustee") filed his Motion to Approve Compromise Under FRBP 9019 and attached memorandum (the "Trust Fund Motion") (Docket Entry # 146) seeking approval of a settlement (the "Settlement") with Debtor's principal and his related entity Plutos Sama Holdings, Inc. Pursuant to the Trust Fund Motion, \$3,412,000 that was held in one of BP's bank accounts were characterized as trust fund monies arising out of various foreclosure sales. As part of the Settlement, BP's principal and related entity delivered \$4,000,000 to the Trustee and ultimately the \$3,412,000 of trust fund monies (the "Trust Fund") will be used to only pay trust fund claims, i.e., claims arising out of missing foreclosure sale proceeds that were delivered to BP in trust but never delivered to the beneficiary (i.e., a lender, Buyer, junior lienholder, or borrower, as appropriate) (the "Trust Fund Claims"). As the court reads it, this fund was never designed to be a comprehensive payment of all that victims *qua* creditors might be entitled to as consequential damages; it was designed purely to refund that which were never truly Debtor's monies. On August 14, 2019, the court entered the Order Granting Motion to Approve Compromise Under Rule 9019 (Docket Entry # 195) (the "Settlement Order") establishing the procedure for filing a trust fund proof of claim. Pursuant to the Settlement Order, the trust fund claim bar date was set as September 16, 2019.

Lexington persuasively argues that the Trust Fund Agreement put into place a claim process solely for Trust Fund Claims that permitted creditors whose money was being held in trust by the Debtor (but not remitted to such creditor) to file a Trust Fund Claim in the amount of the trust fund money that the Debtor held, but failed to remit to such creditor. In effect, Lexington asserts, Trust Fund Creditors are being treated differently than general unsecured creditors by way of the Trust Fund Settlement vis a vis the Trust

**United States Bankruptcy Court
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Wednesday, April 8, 2020

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11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Fund because trust fund money is not property of the bankruptcy estate. See *In re Lopez Roman*, 599 B.R. 87, 94 (Bankr. C.D. Cal. 2019) ("funds that are deposited into an escrow account by a debtor, for the benefit of others cannot be characterized as property of the estate"). Therefore, Trust Fund Claimants have a senior interest in trust fund money, but only in the actual amount of trust fund money that the Debtor was holding for Trust Fund Claimants. As such, Lexington argues, Creditors are free to assert that they have suffered additional damages as a result of the failure of the Debtor to timely remit trust fund money, but these additional damages will be nothing more than general unsecured claims against property of the estate.

As the docket for February 25, 2020 shows, there were many hearings on objections to claims scheduled. However, Lexington asserts that it has been successful in resolving many of its objections and will be filing stipulations confirming the actual claim amounts, the three creditors mentioned above being the exceptions.

As to the claims of these three creditors, Lexington argues that they are attempting to include general unsecured damage claims (e.g. interest) as part of their Trust Fund Claims in violation of the Trust Fund Settlement. Further, Lexington argues that some of these creditors are attempting to assert Trust Fund Claims for monies that do not belong to them, and that these creditors do not even know how much of their trust fund monies Debtor received and allegedly failed to remit to them. Select Portfolio (Claim #67) and Carrington (Claim #70) have not been able to confirm the exact amounts or provide adequate documentation to support their claims, which is highly problematic. Lexington has propounded discovery to fill in this missing information.

Obviously, there is a great deal more going on here than can readily be resolved in a summary proceeding like a claims objection. Lexington

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

requests that these hearings be treated as status conferences pursuant to LBR 3007-1(b)(5), which gives the court discretion to "treat the initial hearing as a status conference." This will allow the parties to hash out any additional discovery and evidentiary issues that should be addressed prior to an evidentiary hearing scheduled for April 7, 2020. This does seem to be an appropriate suggestion, as in a case like this, more clarity and more information is preferable. All parties involved would likely benefit from treating these hearings as status conferences in contested proceedings. If the parties are unable to agree, at the continued status conference deadlines for discovery and law and motion will be set, possible referral to mediation discussed and a pretrial conference scheduled.

Continue as status conference.

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, April 8, 2020

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
(cont'd from 4-07-20 per court's own mtn)

Docket 263

***** VACATED *** REASON: CONTINUED 5-27-20 AT 11:00 A.M. PER
ORDER APPROVING STIPULATION RE: CLAIM NO. 32-2 AND CLAIM
NO. 70 ENTERED 4-06-20**

Tentative Ruling:

Tentative for 2/25/20:
See #11

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, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#35.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim
NO. 87 Filed By Trust Bank
(cont'd from 4-7-20 per court's own mtn)

Docket 449

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 4-01-20**

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**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#36.00 Ditech Financial, LLC's Objection to and Motion to Subordinate and/or Disallow Proof of Claim No. 44-1 filed by Lexington National Insurance Corporation
(cont'd from 4-07-20 per court's own mtn)

Docket 472

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION ENTERED 3-20-20**

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**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#37.00 Select Portfolio Servicing, Inc's Objection to and Motion to Disallow or Subordinate Proof of Claim No. 44 filed by Lexington National Insurance Corporation
(cont'd from 4-7-20 per court's own mtn)

Docket 476

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION ENTERED 3-20-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Movant(s):

SELECT PORTFOLIO

Represented By
Lauren A Deeb

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, April 8, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#38.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim
No. 88 Filed by Trust Bank
(cont'd from 4-7-20 per court's own mtn)

Docket 451

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 4-01-20**

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**

Wednesday, April 8, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#39.00 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.
(cont'd from 4-07-20 per own mtn)

Docket 264

***** VACATED *** REASON: CONTINUED TO 5-27-20 AT 11:00 A.M.
PER ORDER ENTERED 3-20-20**

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**

Wednesday, April 8, 2020

Hearing Room 5B

2:00 PM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

**#40.00 Emergency Motion On Kenneth Gharib's Motion For Release
(OST Signed 4-01-20)**

Docket 808

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Ronald N Richards

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

Wednesday, April 15, 2020

Hearing Room 5B

10:00 AM

8:20-10243 Mark Robin Gaa

Chapter 7

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(rescheduled from 4-14-20 per court)**

TOYOTA MOTOR CREDIT CORPORATION
Vs.
DEBTOR

Docket 16

Tentative Ruling:

Tentative for 4/15/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Mark Robin Gaa

Represented By
Alaa A Ibrahim

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

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

Wednesday, April 15, 2020

Hearing Room 5B

10:00 AM

CONT... Mark Robin Gaa

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Wednesday, April 15, 2020

Hearing Room 5B

10:00 AM

8:20-10760 Mohammadreza Afrouznia and Mahin Makhfi

Chapter 7

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(con't from 4-14-2020 per court)**

TD AUTO FINANCE LLC
Vs.
DEBTORS

Docket 11

Tentative Ruling:

Tentative for 4/15/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Mohammadreza Afrouznia

Represented By
Rachelle Shakoori

Joint Debtor(s):

Mahin Makhfi

Represented By
Rachelle Shakoori

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

Wednesday, April 15, 2020

Hearing Room 5B

10:00 AM

CONT... Mohammadreza Afrouznia and Mahin Makhfi

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, April 15, 2020

Hearing Room 5B

10:00 AM

8:20-10964 Jessica Claire Dunklin

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST
Vs.
DEBTOR

Docket 7

Tentative Ruling:

Tentative for 4/15/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jessica Claire Dunklin

Represented By
Bahram Madaen

Movant(s):

Honda Lease Trust

Represented By
Vincent V Frounjian

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

Wednesday, April 15, 2020

Hearing Room 5B

10:00 AM

CONT... Jessica Claire Dunklin

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, April 15, 2020

Hearing Room 5B

10:00 AM

8:17-12922 Jaime Guerrero

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 4-14-20 per court)**

MERIWEST CREDIT UNION

Vs.

DEBTOR

Docket 70
***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION FOR RELIEF FROM STAY FILED 4-09-20**

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, April 15, 2020

Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

#5.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 2545 Iris Way, Laguna Beach, CA 92651
(con't from 4-14-20 per court)

Docket 7

Tentative Ruling:

Tentative for 4/15/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Michael R Totaro

Movant(s):

Bradley Ray Fox

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Wednesday, April 15, 2020

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

Adv#: 8:19-01042 Laski v. Almada et al

#6.00 Application And Order For Appearance Of Anthony Almada To Enforce Judgment Of Debtor Examination
(con't from 4-14-20 per court)

Docket 48

***** VACATED *** REASON: CONTINUED TO 7/23/2020 AT 11:00 A.M.
PER ORDER CONTINUING JUDGMENT DEBTOR EXAM ENTERED
4/14/2020**

Tentative Ruling:

- NONE LISTED -

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
M Douglas Flahaut

Trustee(s):

Richard J Laski (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian

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CONT... Vitargo Global Sciences, Inc.

Chapter 11

Christopher K.S. Wong
Leonard M Shulman
Ryan D O'Dea

**United States Bankruptcy Court
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Wednesday, April 15, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

**#7.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
[11 U.S.C. Section 523(a)(2)(A) and (a)(4)]
(rescheduled from 4-15-2020 per court)**

Docket 1

Tentative Ruling:

Tentative for 4/15/20:
See #8

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/12/20:
Motion to dismiss was continued to April 16, 2020 at 10:00AM by stipulation.
Continue to April 16, 2020 at 10:00AM.

Tentative for 1/16/20:
This conference will travel together with the dismissal motion. Tentative on that is to continue to allow more briefing. Appearance not required.

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CONT... **Guy S. Griffithe**

Chapter 7

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
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Wednesday, April 15, 2020

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10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

#8.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (a)(4)
(rescheduled from 4-15-2020 per court)

Docket 10

Tentative Ruling:

Tentative for 4/15/20:

This is Defendant, Guy Griffithe's ("Defendant's") motion to dismiss the complaint of Plaintiffs Rebecca Joan Joseph, Jonathan Joseph, Steven Kramer, and Jason Joseph ("Plaintiffs") for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiffs' complaint contains two causes of action both seeking exception to discharge under 11 U.S.C. §523(a)(2)(A) and (4).

It should also be noted that in the reply brief Defendant raised the issue of subject matter jurisdiction based on this case's connection to the marijuana industry. The issue has been determined in another related adversary proceeding, with the court finding that it did have subject matter jurisdiction over this and the other related adversary proceedings. (For example, see adopted tentative ruling from 3/5/20 in *Bagot v. Griffithe*, 8:19-ap-01201, incorporated herein by reference.)

1. 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 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

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CONT... **Guy S. Griffithe**

Chapter 7

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 conclusions. *Id.*

2. Factual and Procedural Background

Defendant allegedly induced Plaintiffs to invest \$400,000 into Green Acres Pharm, LLC, a marijuana growing venture. Defendant was allegedly the managing member of Green Acres Pharm, LLC and therefore allegedly had knowledge of Green Acres Pharm, LLC's operation, debts and profit. Plaintiffs allege that despite knowing that Green Acres Pharm, LLC was being operated by an inexperienced team, had significant debt and was not profitable, Defendant knowingly made false representations to the contrary to Plaintiffs as part of an elaborate fraudulent scheme to take money from purported investors. According to Plaintiffs, Defendant had no intention of making good on any of his promises to Plaintiffs and went to great lengths to conceal his misrepresentations to continue his fraudulent scheme for as long as possible.

On or about October 29, 2018, Plaintiffs filed a lawsuit entitled *Joseph, et al. v. Renewable Technologies Solution, Inc., et al.*, in San Bernardino County Superior Court Case No. CIVDS 1828143 against Defendant for (1) Securities Fraud (Violation of California Corporations Code Section 25102, et

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CONT... **Guy S. Griffithe**

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seq.); (2) Fraud in the Inducement; (3) Negligent Misrepresentation; (4) Breach of Fiduciary Duty; (5) Breach of Contract; (6) Negligence; (7) Unjust Enrichment; (8) Common Count; (9) Accounting; and (10) Injunctive Relief, all in connection with Defendant's alleged elaborate fraudulent scheme.

In response, Defendant filed a chapter 7 petition June 26, 2019. Plaintiffs obtained relief from the automatic stay on September 12, 2019 (to pursue the state court matter) and filed a Complaint to Determine the Dischargeability of Debt against Defendant (the "Adversary Complaint") on September 26, 2019.

3. 11 U.S.C. §523(a)(2)(A) [Actual fraud]

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any 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[.]" The debtor's intent to deceive may be inferred by circumstantial evidence under the 'totality of the circumstances' test. *In re Eashai*, 87 F.3d 1082, 1087 (9th Cir. 1996). Under the relevant test, the Court "may infer the existence of the debtor's intent not to pay if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor." *Id.*

To establish a claim under §523(a)(2)(A), a plaintiff must establish: (1) a representation of fact by the debtor; (2) that was material; (3) that the debtor knew at the time to be false; (4) that the debtor made with the intention of deceiving the creditor; (5) upon which the creditor relied; (6) that the creditor's reliance was reasonable; (7) that damage proximately resulted from the misrepresentation. See *Rubin v. West (In re Rubin)*, 875 F.2d 755, 759 (9th Cir. 1989); see also, *Britton v. Price (In re Britton)*, 950 F.2d 602, 604 (9th Cir. 1991). A claim under this "fraud" exception requires that the claim satisfy the heightened pleading requirements for fraud pursuant to F.R.C.P. 9(b). See *In re Jacobs*, 403 B.R. 565, 574 (Bankr. N.D.Ill. 2009) (citations

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CONT... **Guy S. Griffithe**
omitted)

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F.R.C.P. 9(b) and F.R.B.P. 7009 state: "In alleging fraud, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." While intent or knowledge may be averred generally, however, the plaintiff must still plead the events claimed to give rise to an inference of intent or knowledge *Devaney v. Chester*, 813 F.2d 566, 568 (2d Cir. 1987), which may be accomplished by pleading facts consistent with certain well established "badges of fraud." *In re Sharp Int'l Corp.*, 403F.3d 43, 56 (2d Cir. 2004).

Here, Plaintiffs in their complaint allege in paragraph 30 respecting Defendant's representations:

"b. Green Acres Pharm, LLC was already operating profitable as a company and would be finishing a buildout to expand operations with their investments by the end of 2016; . . . f. Green Acres Pharm, LLC was fully licensed to legally grow marijuana in Washington State and was prepared to immediately prepare and sell oils; g. Green Acres Pharm, LLC had a significant inventory of marijuana plants in cultivation; h. Green Acres Pharm, LLC did not have any debt and owned the buildings on its property; i. Green Acres Pharm, LLC was financially sound and had a market value of over \$20M; j. Defendant had a substantial net worth and would back Plaintiffs' investment; . . . l. Green Acres Pharm, LLC was operated by an experienced team of honest people; m. Defendant had extensive experience in running marijuana grow operations; . . . p. Brooks Bailey was also investing in Green Acres Pharm, LLC."

Plaintiffs allege that these were false representations and Defendant knew they were false when they were made. Plaintiffs also allege that these representations were made with intent to induce reliance upon them, which would, in turn, lead Plaintiffs to invest their money. These allegations, taken as true, are enough to both state a claim upon which relief can be granted under §523(a)(2)(A) and to satisfy the heightened specificity requirements

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CONT... **Guy S. Griffithe**
under Fed. R. Civ. P. 9(b).

Chapter 7

4. 11 U.S.C. 523(a)(4) [breach of fiduciary duty, embezzlement or larceny]

This section provides: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) 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[.]"

For purposes of § 523(a)(4), embezzlement is defined as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269, 16 S. Ct. 294, 295, (1885). Further, as explained in *Murray v. Woodman (In re Woodman)*, 451 B.R. 31 (Bankr. D. Idaho 2011), "an intent to deprive the rightful owner of funds only temporarily and not permanently [does] not negate the element of [fraudulent] intent." *Id.* at 43. "To prevail under § 523(a)(4) for larceny, a creditor must prove that 'the debtor has wrongfully and with fraudulent intent taken property from its owner. Larceny differs from embezzlement in the fact that the original taking of property was unlawful, and without the consent of the injured person.'" *King v. Lough (In re Lough)*, 422 B.R. 727, 735-36 (Bankr. D. Id. 2010). (internal citations omitted)

Here, Plaintiffs' Complaint alleges that Defendant was a managing member of Green Acres Pharm, LLC and CEO, Secretary, CFO and Director of Renewable Technologies Solution, Inc. (Complaint ¶¶ 40-41.) In those capacities, Plaintiffs' complaint alleges that Defendant was in rightfully possession of Plaintiffs' investment money for Green Acres Pharm, LLC and Renewable Technologies Solution, Inc. The Plaintiffs in the complaint then allege that Defendant promised Plaintiffs that all their investment money would be "used to expand the marijuana oil production of Green Acres, and that the build out would be done by the end of 2016." (Adversary Complaint ¶¶ 7, 30b.) However, Plaintiffs allege that Defendant "did not use the Plaintiffs' investment money to finish the build out nor did [Defendant] finish

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CONT...

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the build out in 2016." (Adversary Complaint ¶ 31b.) Further, in the complaint it is alleged that there is no indication that the investment funds were used in the business at all. Plaintiffs conclude that the investment funds were used by Defendant for a purpose other than the use for which he was entrusted to use said funds. Lastly, as already discussed above, Plaintiffs believe that the circumstances surrounding Plaintiffs' investment funds and Defendant's use of said funds was all part of a fraudulent scheme to bilk investors. Thus, Plaintiffs plead plausible facts to support the elements of embezzlement for purposes of surviving a motion to dismiss.

5. Conclusion

Plaintiffs' complaint does contain sufficiently specific allegations to conform to the basic pleading standards and to inform both the Defendant and the court as to the nature of the action. Again, this is simply a motion to determine whether the complaint has alleged sufficient facts to plausibly support the causes of action, the court makes no determination as to liability based upon these allegations at this time which is beyond the province of Rule 12.

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CONT... Guy S. Griffithe

Chapter 7

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and illegal under federal law.

Even though cannabis sale has now been legal in several states for several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under

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CONT... Guy S. Griffithe

Chapter 7

the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.' *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue. The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into

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CONT...

Guy S. Griffithe

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envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not cause mandatory dismissal." *Id.* at *7.

The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

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Guy S. Griffithe

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The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: ‘one that seeks equity must do equity’, or ‘equity will not allow a statute to be used as a cloak for fraud.’

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court’s view, gross inequity would result if Debtor could defeat Plaintiffs’ complaints based on this court’s purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

Perhaps the better questions are, should only part of the court’s jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central

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CONT... Guy S. Griffithe

Chapter 7

question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Represented By
Baruch C Cohen

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
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Wednesday, April 15, 2020

Hearing Room 5B

11:00 AM

8:20-10295 Katangian Vail Avenue Property Investments, LLC a

Chapter 11

#1.00 Motion To Sell Property of the Estate Free and Clear of Liens under Section 363(f)

Docket 23

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF DEBTOR AND DEBTOR IN POSSESSION MOTION
FOR ORDER AUTHORIZING FILED 4/8/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katangian Vail Avenue Property

Represented By
Michael R Totaro

**United States Bankruptcy Court
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11:00 AM

8:15-15801 Joon Han Kim and Soon Ok Kim

Chapter 7

**#2.00 Trustee's Final Report And Applicaiton For Compensation:
(cont'd from 3-31-2020 per court)
(cont'd from 4-01-20)**

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

DONALD W. SIEVEKE, ATTORNEY FOR CHAPTER 7 TRUSTEE

PEDERSEN LAW, APC, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

BERKSHIRE HATHAWAY HOME SERVICES, REALTOR FOR TRUSTEE

NEWSTAR REALTY, REALTOR FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, OTHER PROFESSIONAL

FIRST AMERICAN TITLE CORPORATION, OTHER PROFESSIONAL

HOA AND ASSOCIATIONS, OTHER

PICKFORD ESCROW, OTHER

OC TAX COLLECTOR, OTHER

Docket 134

Tentative Ruling:

Tentative for 4/15/20:
Allow as prayed. Appearance optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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CONT... Joon Han Kim and Soon Ok Kim

Chapter 7

to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:

The court is left very unclear on the status of the claim for professional fees of Pedersen Law. There appears to have been \$842,000 paid. But if a final allowance is being sought here, no showing is made justifying this amount. Moreover, reference is made in Trustee's report over a disagreement.

The court is mindful of its order of January 7, 2020 allowing interim fees, but one presumes that final allowance is now being sought. It looks like the \$842,000 was part of a settlement of which the estate netted \$75,000 after a \$25,000 fee award was deducted. But the court should not be left with the task of combing the record trying to determine what happened in a final report and allowance request.

No tentative as to Marshack and Pedersen. Hahn Fife fees and costs allowed as prayed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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CONT... Joon Han Kim and Soon Ok Kim

Chapter 7

Party Information

Debtor(s):

Joon Han Kim

Represented By
Arlene M Tokarz
Harlene Miller

Joint Debtor(s):

Soon Ok Kim

Represented By
Arlene M Tokarz
Harlene Miller

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke
Neil Pedersen

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Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

8:19-13139 Brian Leach

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/18/20:

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

CONT... Brian Leach

Chapter 13

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.

Party Information

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:19-13917 Hector Aguiluz Pineda

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 24

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

CONT... Hector Aguiluz Pineda

Chapter 13

Debtor(s):

Hector Aguiluz Pineda

Represented By
Christopher J Langley

Movant(s):

Hector Aguiluz Pineda

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14502 Andy T. Torres

Chapter 13

**#3.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-2020)**

Docket 23

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

CONT... Andy T. Torres

Chapter 13

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Movant(s):

Andy T. Torres

Represented By
Richard G Heston
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

**#4.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 0

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:

Status on missing payments, 341(a) business budget, etc.?

Party Information

Debtor(s):

Ashley Dawn Conrad

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, April 15, 2020

Hearing Room 5B

1:30 PM

8:19-14634 Trinna Mong Trinh Nguyen

Chapter 13

**#5.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 5

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

CONT... Trinna Mong Trinh Nguyen

Chapter 13

Tentative for 2/19/20:
Status of delinquencies, mortgage and tax statements, etc.?

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen	Pro Se
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Movant(s):

Trinna Mong Trinh Nguyen	Pro Se
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Trustee(s):

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

8:19-14637 Shane Alan Magness

Chapter 13

**#6.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)**

Docket 11

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Shane Alan Magness

Represented By
Hasmik Jasmine Papian

Movant(s):

Shane Alan Magness

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14724 Jeffrey Lowry

Chapter 13

**#7.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/18/20:

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Party Information

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

CONT... Jeffrey Lowry

Chapter 13

Debtor(s):

Jeffrey Lowry

Represented By
Michael D Franco

Movant(s):

Jeffrey Lowry

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-14802 Christi McGowan and Matthew McGowan

Chapter 13

**#8.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 13

Tentative Ruling:

Tentative for 4/15/20:

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Tentative for 3/18/20:

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

CONT... Christi McGowan and Matthew McGowan

Chapter 13

Debtor(s):

Christi McGowan

Represented By
Gary Polston

Joint Debtor(s):

Matthew McGowan

Represented By
Gary Polston

Movant(s):

Christi McGowan

Represented By
Gary Polston
Gary Polston
Gary Polston

Matthew McGowan

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:19-14953 Sara Moghaddam

Chapter 13

**#9.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 11

Tentative Ruling:

Tentative for 4/15/20:

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Tentative for 3/18/20:

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Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

CONT... Sara Moghaddam

Chapter 13

Debtor(s):

Sara Moghaddam

Represented By
Christopher J Langley

Movant(s):

Sara Moghaddam

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 15, 2020

Hearing Room 5B

1:30 PM

8:19-15004 Ghadi Aboulhosn

Chapter 13

**#10.00 Confirmation Of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

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Tentative for 3/18/20:

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

CONT... Ghadi Aboulhosn

Chapter 13

Party Information

Debtor(s):

Ghadi Aboulhosn

Represented By
Andrew Moher

Movant(s):

Ghadi Aboulhosn

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 15, 2020

Hearing Room 5B

1:30 PM

8:20-10009 Jay Escano and Annie Escano

Chapter 13

**#11.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/18/20:

Trustee's points are well-taken. Deny, absent explanation.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, April 15, 2020

Hearing Room 5B

1:30 PM

CONT... Jay Escano and Annie Escano

Chapter 13

Party Information

Debtor(s):

Jay Escano

Represented By
Gary S Saunders

Joint Debtor(s):

Annie Escano

Represented By
Gary S Saunders

Movant(s):

Jay Escano

Represented By
Gary S Saunders

Annie Escano

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10153 Keri L Doumani

Chapter 13

**#12.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

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Tentative for 3/18/20:

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Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

CONT... Keri L Doumani

Chapter 13

Debtor(s):

Keri L Doumani

Represented By
Kevin Tang

Movant(s):

Keri L Doumani

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10181 Marco Brito

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10215 Cris Silva

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

Docket 7

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Cris Silva

Represented By
Jacqueline D Serrao

Movant(s):

Cris Silva

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10233 Lincoln Cabus

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Docket 14

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Lincoln Cabus

Represented By
Jaime A Cuevas Jr.

Movant(s):

Lincoln Cabus

Represented By
Jaime A Cuevas Jr.
Jaime A Cuevas Jr.
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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10241 Mehdi Safarzadeh

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 2-11-20**

Tentative Ruling:

Confirmation Of Chapter 13 Plan

Party Information

Debtor(s):

Mehdi Safarzadeh

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10256 Thomas Richard Reynolds

Chapter 13

#17.00 Confirmation Of The Chapter 13 Plan

Docket 4

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Thomas Richard Reynolds

Represented By
Anerio V Altman

Movant(s):

Thomas Richard Reynolds

Represented By
Anerio V Altman
Anerio V Altman
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10291 Cesar D. Lingad

Chapter 13

#18.00 Confirmation Of The Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Cesar D. Lingad

Represented By
Julie J Villalobos

Movant(s):

Cesar D. Lingad

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10302 Daniel Iniguez

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

Docket 23

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Daniel Iniguez

Represented By
William Huestis

Movant(s):

Daniel Iniguez

Represented By
William Huestis

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10308 Anna Burnell

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Anna Burnell

Represented By
Christopher J Langley

Movant(s):

Anna Burnell

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10309 Angela Maria Sancho

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

Docket 10

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Angela Maria Sancho	Pro Se
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Movant(s):

Angela Maria Sancho	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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10370 William Frank Cabacungan

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

William Frank Cabacungan

Represented By
Ethan Kiwhan Chin

Movant(s):

William Frank Cabacungan

Represented By
Ethan Kiwhan Chin

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10371 Enrique Loaiza and Veronica Labastida

Chapter 13

#23.00 Confirmation Of The Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Enrique Loaiza

Represented By
Mehran R Chini

Joint Debtor(s):

Veronica Labastida

Represented By
Mehran R Chini

Movant(s):

Enrique Loaiza

Represented By
Mehran R Chini

Veronica Labastida

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

CONT...

Enrique Loaiza and Veronica Labastida

Mehran R Chini

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10405 Marc Wayne Wright

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

Docket 12

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Marc Wayne Wright	Pro Se
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Movant(s):

Marc Wayne Wright	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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10474 Thomas Alan Valenzuela

Chapter 13

#25.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 3-16-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Alan Valenzuela

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 1675 Calendar**

Wednesday, April 15, 2020

Hearing Room 1675

1:30 PM

8:20-10507 Veronica D. Batang

Chapter 13

#26.00 Confirmation of First Amended Chapter 13 Plan

Docket 14

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Veronica D. Batang

Represented By
Steven A Alpert

Movant(s):

Veronica D. Batang

Represented By
Steven A Alpert
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, April 15, 2020

Hearing Room 5B

3:00 PM

8:15-10606 Barry Edward Cambeilh and Alberta Bonita Cambeilh

Chapter 13

**#1.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments
(cont'd from 1-15-20)**

Docket 63

Tentative Ruling:

Tentative for 4/15/20:

As the court understands it, the Trustee seeks to modify the plan payments to \$3112 effective 12/19 and to increase the base to \$4668 plus whatever unremitted tax refunds are discovered for the period of the plan. The upward adjustment is allegedly justified since the debtors are no longer paying on a junior lien. Presumably, this modification is offered as an alternative to dismissal outright for failure to remit tax refunds. The court views this as generous since failure to remit promised tax refunds would itself be grounds for dismissal as a material default. The court will give the debtors the choice: either grant this motion or dismiss unless all tax refunds due are paid as of the hearing. If all missing refunds are paid as of the hearing then the court will continue the hearing to provide an opportunity to explain why there never was any effective increase in disposable income justifying a modification.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Barry Edward Cambeilh and Alberta Bonita Cambeilh

Chapter 13

Tentative for 1/15/20:
See #32. If the debtors have cured the tax refund and returns issue, the court will consider whether, in light of the alleged additional \$1500 of income, and whether undisclosed further tax refunds, mandate either denial of the motion or further adjustment.

Party Information

Debtor(s):

Barry Edward Cambeilh

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Alberta Bonita Cambeilh

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 15, 2020

Hearing Room

5B

3:00 PM

8:15-10606 Barry Edward Cambeilh and Alberta Bonita Cambeilh

Chapter 13

**#2.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding
(cont'd from 1-15-20)**

Docket 62

Tentative Ruling:

Tentative for 4/15/20:

Grant unless all arrears paid to the Trustee and all tax returns/refunds to date mentioned by the Trustee are given to Trustee, but see the choice regarding modification in #1.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/15/20:

Grant unless all defaults cured.

Party Information

Debtor(s):

Barry Edward Cambeilh

Represented By
Michael Jones
Sara Tidd

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Barry Edward Cambeilh and Alberta Bonita Cambeilh

Chapter 13

Joint Debtor(s):

Alberta Bonita Cambeilh

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 15, 2020

Hearing Room

5B

3:00 PM

8:15-11274 Michael Kevin Fountain and Wendy L. Christensen

Chapter 13

#3.00 Trustee's Motion To Dismiss Case Failure To Complete The Plan Within Its Terms.
(cont'd from 2-19-20)
(cont'd from 3-18-20)

Docket 77

Tentative Ruling:

Tentative for 4/15/20:

The court is unclear why the Trustee believes \$34,300 is currently due under the plan. Is this because we have reached (or nearly so) the 5 year mark with this sum needed to complete a percentage? If that is true, how can this deficiency be cured by modification? Further, what's the argument for a last-minute modification? How can it be argued that debtors failed to see this end of the road coming? See #4. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Continue to April 15, 2020 @ 3:00PM.

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Michael Kevin Fountain and Wendy L. Christensen Chapter 13

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:

Grant unless both current on existing plan payments and motion to modify is on file sufficient to account for how the \$34,300 needed will be met.

Party Information

Debtor(s):

Michael Kevin Fountain

Represented By
Richard G Heston

Joint Debtor(s):

Wendy L. Christensen Fountain

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:15-11274 Michael Kevin Fountain and Wendy L. Christensen

Chapter 13

#4.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 86

Tentative Ruling:

Tentative for 4/15/20:

The debtors propose to modify their plan from 100% to 83%. First, any modification is out of the question without having given the Trustee all of the returns he requests, by the time of the hearing. Second, a better explanation is needed as to why the debtors would wait until the figurative "end of the road" to argue for a downward adjustment on the percentage. Certainly, it cannot be argued that no one saw this coming? If there was some unforeseeable calamity, what was it and when did it become known? Absent this, why the wait? While the percentage actually paid is laudable that cannot by itself justify such a departure from the plan. Otherwise confirmed plans are mere suggestions which everyone will then adjust as the 58th month approaches to conform to what was actually done. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Michael Kevin Fountain

Represented By

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... **Michael Kevin Fountain and Wendy L. Christensen**
Richard G Heston

Chapter 13

Joint Debtor(s):

Wendy L. Christensen Fountain	Represented By Richard G Heston
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Movant(s):

Michael Kevin Fountain	Represented By Richard G Heston
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Wendy L. Christensen Fountain	Represented By Richard G Heston Richard G Heston
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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 15, 2020

Hearing Room 5B

3:00 PM

8:15-11287 Edward Lee

Chapter 13

#5.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c)) Failure to Complete the Plan Within its Terms
(cont'd from 2-19-20)

Docket 52

Tentative Ruling:

Tentative for 4/15/20:
Grant unless current or resolved by stipulation.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:
Grant unless current or other remedy sought.

Party Information

Debtor(s):

Edward Lee

Represented By
Thomas B Ure

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Edward Lee

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 15, 2020

Hearing Room

5B

3:00 PM

8:15-13438 Salvador Manuel Robledo

Chapter 13

**#6.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding
(cont'd from 3-18-20)**

Docket 113

Tentative Ruling:

Tentative for 4/15/20:
Grant unless current. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Grant absent explanation or modification motion on file if otherwise current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Salvador Manuel Robledo

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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, April 15, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

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

Docket 74

Tentative Ruling:

Tentative for 4/15/20:

Continue to coincide with hearing on the modification motion filed April 2.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

Trustee(s):

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 15, 2020

Hearing Room 5B

3:00 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

**#8.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 1-15-20)
(cont'd from 3-18-20)**

Docket 40

Tentative Ruling:

Tentative 4/15/20:

Grant absent all payments being brought current or suitable explanation of the discrepancy. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Status? Is debtor current or not?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Martin Garcia and Desiree Marie Garcia

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 1/15/20:
Is the debtor current, or not? See #37.

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

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Martin Garcia and Desiree Marie Garcia

Chapter 13

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 15, 2020

Hearing Room 5B

3:00 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

#8.10 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 69

Tentative Ruling:

Tentative for 4/15/20:

Debtors need to respond to the points made in Trustee's opposition. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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, April 15, 2020

Hearing Room 5B

3:00 PM

8:17-14634 Kirk P Howland

Chapter 13

#9.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 3-18-20)

Docket 87

Tentative Ruling:

Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/18/20:

Grant unless current or motion on file.

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Kirk P Howland

Chapter 13

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**

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:18-10860 Jose Navarro

Chapter 13

#10.00 Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c) for failure to make plan payments.
(cont'd from 3-18-20)

Docket 86

Tentative Ruling:

Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Grant unless current or modification motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

CONT... Jose Navarro

Chapter 13

Party Information

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 15, 2020

Hearing Room 5B

3:00 PM

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

Chapter 13

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

Docket 65

Tentative Ruling:

Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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, April 15, 2020

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

**#12.00 Confirmation of Chapter 13 Plan
(con't from 2-19-20)**

Docket 2

Tentative Ruling:

Tentative for 4/15/20:
Continue to July 15 at 3:00PM to coincide with claim objection hearing.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 2/19/20:
Status?

Tentative for 1/15/20:
Status? See #56.

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3:00 PM

CONT... Diane Weinsheimer

Chapter 13

Tentative for 11/20/19:

Is resolution of #58 a precondition to confirmation?

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.

Tentative for 8/21/19:

Evidentiary hearing on claim objection is being continued by stipulation?

Tentative for 5/29/19:

Same.

Tentative for 4/17/19:

Is a resolution of claim objection (see #43) necessary before confirmation?

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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Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#13.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing
(con't from 2-19-20 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered 2-18-20)

Docket 26

***** VACATED *** REASON: CONTINUED TO 7-15-20 AT 3:00 P.M.
PER ORDER TO CONTINUE EVIDENTIARY HEARING ON DEBTOR'S
OBJECTION TO PROOF OF CLAIM OF SHELLPOINT MORTGAGE
SERVICING ENTERED 4-13-20**

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
Central District of California
Santa Ana
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Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#14.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)**

Docket 48

Tentative Ruling:

Tentative for 4/15/20:

Debtor may have presented enough (barely) to overcome the "regular income" question, but the Trustee's other points remain to be addressed; (1) what about the 3d TD Diversified (2) Ford lease (3) evidence on monthly expenses and reasonableness of same (4) evidence of residence value for best interest of creditors question.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:
See #51

Party Information

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Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

3:00 PM

CONT... Charles Ragan Peyton, III

Chapter 13

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Charles Ragan Peyton III

Represented By
Richard G Heston
Richard G 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 15, 2020

Hearing Room 5B

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#15.00 Objection to Claim of Homestead Exemption
(cont'd from 2-19-20)**

Docket 69

Tentative Ruling:

Tentative for 4/15/20:
Same as 2/19/20.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:

This is the Trustee's objection to the debtor's enhanced claim of homestead under CCP §704.730(a)(3)(B) against the property commonly known as 80 Gingerwood, Irvine, CA.

The Debtor filed a voluntary chapter 7 petition on January 17, 2019. On the filing date, Debtor indicated on his Schedule I that he was employed but temporarily disabled and that he was receiving State Disability Income (SDI) in the amount of \$1,026.29 per month. He indicated that he did not expect an increase or a decrease in income within the year after filing. On

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CONT... Charles Ragan Peyton, III

Chapter 13

this original filing, Debtor claimed a homestead exemption of \$100,000.

According to Debtor's testimony, he returned to work in mid-May. In the beginning of October, he amended his Schedules I and J and disclosed that he was no longer receiving disability, that he was employed as a chain store merchandizer, and that he had a monthly net income of \$835.21. On the same day he amended his Schedules, Debtor filed a motion to convert the case to chapter 13, which went uncontested. There is an underlying implication that the conversion was self-serving inasmuch as the Chapter 7 trustee reportedly showed some signs of interest in selling the Gingerwood property. But we have no real evidence of improper motive such as in *Marrama v. Citizens Bank*, 549 U.S. 365 (2007).

In early December, Debtor amended his Schedules I and J again. On his amended Schedule I, Debtor indicated that he was still employed but added that he was again temporarily disabled and recorded income only from state disability. On his amended Schedule J, he disclosed that he had a negative net monthly income of \$292.80. A few weeks after amending his Schedules I and J, Peyton amended his Schedules A, B, and C. He indicated that the value of his property increased, and he changed his homestead exemption to \$175,000. Debtor claimed this increased exemption under CCP § 704.730(a)(3)(B), which requires that a Debtor must be mentally or physically disabled and unable to engage in substantial gainful employment. The Trustee has filed a timely objection.

1. The Debtor Was Permitted to Amend His Schedules

First, we must determine if the Debtor was even able to amend his Schedules. A debtor may amend his petition, list, schedule or statement at any time before the case is closed. FRBP. 1009(a). This is liberally construed, and a debtor does not need court approval before amending his schedules. *In re Michael*, 163 F.3d 526, 529 (9th Cir. 1998). There does not seem to be any dispute whether Debtor was entitled to amend his Schedules,

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CONT... Charles Ragan Peyton, III

Chapter 13

the conflict is whether he can claim this enhanced homestead exemption.

2. The Debtor Has the Burden of Proving He is Entitled to the Exemption

There is confusion in the papers over who has the burden of proof when a debtor claims an exemption. Debtor argues that the Trustee bears the burden of proving the homestead exemption was not properly claimed. This argument is consistent with FRBP 4003(c). The rule in the Ninth Circuit had been that a debtor's claimed exemption is presumptively valid and the party objecting to a debtor's exemption has the burden of proving that the claimed exemption is improper. *In re Carter*, 182 F.3d 1027 (9th Cir. 1999).

However, new authority has shifted this burden. The Supreme Court has held, after the ruling in *Carter*, that state law governs substance claims and burden of proof is substantive given its importance to the outcome of cases. *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000). The Ninth Circuit, interpreting the ruling of *Raleigh*, found that the burden of proving state law exemptions should be governed by the appropriate state law. *In re Diaz*, 547 B.R. 329 (9th Cir. BAP 2016). The court in *Diaz* acknowledged the holding in *Carter*, that the burden of proof for claiming exemptions was dictated by federal rule 4003(c), but *Raleigh* was decided after *Carter*. The authority now appears to be that when a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation. *Id.* See also *In re Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); *In re Barnes*, 275 B.R. 889, 898 n.2 (Bankr. E.D. Cal. 2002).

This court adopts the burden of proof outlined in *Diaz* and in accordance with California state law, which dictates the burden of proof is on the party claiming the exemption. Cal Code Civ Proc §703.580. Therefore,

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CONT... Charles Ragan Peyton, III

Chapter 13

Debtor has the burden of proving that the homestead exemption he claimed under CCP §704.730(a)(3)(B) is valid. But is that burden carried?

3. The Preponderance of Evidence Suggests Debtor is Entitled to the Homestead Exemption.

To claim the exemption under CCP §704.730(a)(3)(B) a debtor must be: (1) physically or mentally disabled and (2) unable to engage in substantial gainful employment. A debtor's entitlement to this exemption is determined based on the facts that existed at the time the bankruptcy was filed. Debtor has provided enough evidence to establish that he does have a mental illness. First, at the time he filed his petition he was on temporary disability and was receiving temporary state disability income. Being on disability suggests that he indeed had some mental or physical illness.

Second, Debtor provided testimony from Dr. Boerlin who claims that Debtor suffered and continues to suffer from a psychiatric illness. Debtor has been a patient of Dr. Boerlin for several years and Dr. Boerlin's certification as a Diplomate in psychiatry by the American Board of Psychiatry and Neurology seems to qualify him to make this determination. Further, Debtor testified that in January 2019 he was discharged from Northbound, an addiction rehabilitation center, due to the severity of his mental health problems. The Trustee has not provided any evidence indicating that Debtor was not deserving of the state disability income or evidence that Dr. Boerlin's testimony is not credible. Therefore, Debtor has met his burden of proof that he did have a mental disability on the petition date.

The more difficult question is whether Debtor has met his burden of proving the second element, that when the bankruptcy was filed, he was unable to engage in substantial gainful employment. Gainful employment is substantial if it involves significant physical or mental activity and is gainful if it is done for pay or profit, whether or not a profit is realized. *In re Rostler*, 169 B.R. 408 (Bankr. C.D. Cal. 1994). The debtor must be physically,

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CONT... **Charles Ragan Peyton, III**

Chapter 13

mentally, and emotionally able to work enough hours, at a high enough net wage, to contribute materially to his support. *In re Neff*, No. BAP CC-12-1664-KITAD, 2014 WL 448885 (B.A.P. 9th Cir. 2014).

The Trustee argues that by filing an amended Schedule I asserting employment income in conjunction with the motion to convert, the Debtor is judicially estopped from arguing that he was unable to engage in substantial gainful employment (as of the petition date). These actions are suspicious, and it is possible that he is trying to take advantage of the court by claiming an ability to work at one point and an inability to work at another, whenever it is convenient for him. However, it is also possible that Debtor suffered from a mental illness at the time he filed his petition, attempted to return to work, but was ultimately unable to do so successfully because of his mental illness. The court's concern is to determine Debtor's condition at the time of filing. Returning to work and converting the case to chapter 13, several months after the petition date, is not determinative that Debtor was trying to take advantage of the court or that he was able to engage in substantial gainful employment at the time of filing. Subsequent recovery from a mental illness does not indicate that someone never suffered from a mental illness that prevented them from engaging in substantial gainful employment, particularly as here where relapse seems to have occurred.

It should be said that Debtor's arguments are not totally convincing. Debtor argues that because he was on disability at the time that he filed for bankruptcy he was unable to engage in substantial gainful employment. Being on disability may indicate that Debtor was not able to work at Southern Glazers Wine & Spirits however, it does not necessarily indicate that he was not able to engage in *any* type of substantial gainful employment. Receiving disability from one job is not determinative that he cannot have substantial gainful employment elsewhere.

But Debtor also presents Dr. Boerlin's testimony where he claims that

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CONT... Charles Ragan Peyton, III

Chapter 13

Debtor was unable to engage in substantial gainful employment at the date of filing, which is convincing and is largely not rebutted. The timeline of Debtor's and Dr. Boerlin's relationship is concerning. The court is concerned over what Debtor's condition was on the petition date, and although he has been Dr. Boerlin's patient for several years, we are unsure of when Dr. Boerlin last saw Debtor to diagnose him. Dr. Boerlin testifies that since January 2019, Debtor has been suffering from a disability that prevents him from engaging in substantial gainful employment, but when did Dr. Boerlin make this determination? Debtor became Dr. Boerlin's patient most recently starting on February 20, 2019, which is a month after the petition. Considering Debtor was able to return to substantial gainful employment, albeit shortly, only five months after the petition was filed, it would have been helpful to know when Dr. Boerlin last saw Debtor to form his diagnosis.

Further, according to Debtor's testimony, he was a patient at Northbound rehabilitation center in January 2019, where he was supposedly discharged due to his mental illness. Why did Debtor not include any testimony from employees at the rehabilitation center to corroborate his claim?

Neither party's arguments give a clear indication of Debtor's condition on the date of filing, but the facts preponderate in the Debtor's favor. While being on disability does not prove definitively that Debtor was unable to engage in any substantial gainful employment, it does suggest mental illness prevented him from doing so. Further, while we do not have the exact timeline, Debtor was under Dr. Boerlin's psychiatric care intermittently for several years and met with him only a month after the filing. The court will defer to Dr. Boerlin's medical expertise as he indicates that Debtor was unable to engage in substantial gainful employment at the filing date because of his mental illness. The Trustee's only real argument is that Debtor is trying to take advantage of the court by claiming at one point he could work so he could get his case converted to chapter 13, but is now claiming that he was

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CONT... Charles Ragan Peyton, III

Chapter 13

unable to work so he can claim this homestead exemption. While this inconsistency is noteworthy, it not enough to overcome Debtor's evidence. It is not inconceivable that he was unable to engage in substantial gainful employment on the date of the petition, attempted to go back to work and converted his case to chapter 13, but ultimately had to go back on disability as his relapsed illness overtook him. Evidence of being on disability at the time of filing and the testimony from the seemingly qualified Dr. Boerlin persuades the court, on balance, that at the date of filing Debtor was unable to engage in substantial gainful employment, thus fulfilling the second element of the exemption.

Overrule

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
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Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:19-10568 Shanae Embry and Terrance Embry

Chapter 13

#16.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 2-19-20)
(cont'd from 3-18-20)

Docket 67

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S FILED 4-07-20**

Tentative Ruling:

Tentative for 3/18/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Grant unless current.

Party Information

Debtor(s):

Shanae Embry

Represented By
Lauren Rode

**United States Bankruptcy Court
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CONT... Shanae Embry and Terrance Embry

Chapter 13

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
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Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:19-10620 Alice C. Sessamen

Chapter 13

#17.00 Motion under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 32

***** VACATED *** REASON: WITHDRAWAL OF DEBTOR'S) MOTION FOR SUSPENSION AND MODIFICATION OF CHAPTER 13 PLAN FILED 4/13/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(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
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Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#18.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c)) (failure to make plan payments)
(cont'd from 2-19-20)
(cont'd from 3-18-20)

Docket 32

Tentative Ruling:

Tentative for 4/15/20:

Grant unless current or modification on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Same, status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

**United States Bankruptcy Court
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CONT... Annelize Ladage

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Same.

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Annelize Ladage

Represented By
Michael D Franco

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

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#19.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision

Docket 50

Tentative Ruling:

Tentative for 4/15/20:

Debtor has not addressed the question raised by the Trustee, i.e. failure to provide for several claims and inability to achieve promised percentage at the current rate. While a modification might cure these the motion will be granted unless such a motion is on file as of the hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(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
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Hearing Room 5B

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8:19-12629 Eduardo Meza

Chapter 13

#20.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 3-18-20)

Docket 66

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE 4-07-20**

Tentative Ruling:

Tentative for 3/18/20:
Grant unless current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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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
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Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

**#21.00 Verified Trustee's Motion For Dismissing Chapter 13 Proceeding
(cont'd from 2-19-20)**

Docket 51

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 4-07-20**

Tentative Ruling:

Tentative for 2/19/20:

Grant unless funds necessary to make payments are turned over to trustee within 10 days. See #46 - motion to modify.

Party Information

Debtor(s):

Dale Grabinski

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:19-13056 Jennifer S. Monson

Chapter 13

#22.00 Objection To Claim Number 4 Filed By Claimant BMW Financial Services NA, LLC.

Docket 27

Tentative Ruling:

Tentative for 4/15/20:
Sustain. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(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
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8:20-10050 Dat Ngo

Chapter 13

#23.00 Motion of United States Trustee to determine whether compensation paid to counsel was excessive under 11 U.S.C. Section 329 and F.R.B.P. 2017 and to order counsel to file a 2016(b) statement

Docket 14

Tentative Ruling:

Tentative for 4/15/20:
Granted. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Dat Ngo

Represented By
Anthony P Cara

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Hearing Room 5B

3:00 PM

8:20-10153 Keri L Doumani

Chapter 13

#24.00 Objection to Debtor's Claims of Exemption

Docket 0

Tentative Ruling:

Tentative for 4/15/20:
Sustain. Allow at \$75,000?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Keri L Doumani

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 15, 2020

Hearing Room 5B

3:00 PM

8:20-10396 Gregory Burke

Chapter 13

#25.00 Order To Show Cause RE: Dismissal For Failure to Comply With Rule 1006(b)
[Second Installment amount of \$95.00 due on or 3/3/2020]

Docket 1

Tentative Ruling:

Tentative for 4/15/20:

Dismiss unless fee is paid in full as of hearing. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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, April 15, 2020

Hearing Room 5B

3:00 PM

8:20-10681 April Joy Gonzales Alvarado

Chapter 13

#26.00 Order To Show Cause Why Case Should Not Be Dismissed: Debtor Has Multiple Cases Pending That Have Not Been Dismissed

Docket 0

Tentative Ruling:

Tentative for 4/15/20:
Dismiss. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

April Joy Gonzales Alvarado 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 15, 2020

Hearing Room 5B

4:00 PM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#27.00 Emergency Motion On Kenneth Gharib's Motion For Release
(OST Signed 4-01-20)
(cont' from 4-08-30)

Docket 808

Tentative Ruling:

Tentative for 4/15/20:

This is a continued hearing on the motion of contemnor, Kenneth Gharib (sometimes "contemnor"), for immediate release from his confinement at the Santa Ana jail. Mr. Gharib is approaching his fifth year in confinement under this court's order of May 12, 2015 which was entered after he was found in contempt of the court's previous order requiring him to turnover certain monies on deposit constituting proceeds of property of the estate. The court has since the beginning of Mr. Gharib's confinement conducted some twelve or more status conferences. At each such status conference Mr. Gharib has alternatively argued that the money was invested in Iran (and lost there) or that it was for other reasons impossible to return. One recent reason offered via letter to the court by the contemnor's brother, Mr. Rashtabadi, was altogether different, i.e. that the money had all been lost on some vaguely described movie venture, and so could not be returned. None of the varying excuses offered were the least credible and so the court until now has found that Mr. Gharib continues in his contempt and continues to possess the proverbial keys to the jail cell. Consequently, the confinement order, in the court's view, continued to have its proper coercive effect. The confinement order has also thus far withstood several appeals filed by Mr. Gharib. In the recent several status hearings, the argument has changed from impossibility of purging the contempt to denial of due process by reason of the very length of the confinement as no longer "coercive." Until now the court has held the view, and still holds the view, that permissible coercion still

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CONT... **Kenny G Enterprises, LLC**
applies justifying continued confinement.

Chapter 7

But the calculus may have changed in the present motion. The court is vividly aware that Mr. Gharib has not, in these proceedings, been convicted of any crime. He has been held in contempt, a purely civil matter. The only legitimate purpose of the continued confinement is coercion, not punishment. The court does not doubt the point made by the Public Defender on behalf of contemnor, i.e. that 5th and 14th Amendment Due Process governs these proceedings, not the 8th Amendment prohibition against cruel and unusual punishment. In that regard, the court also accepts that the court must be even more solicitous that confinement does not pose any increased danger to the contemnor's health for to do so is to add *sub rosa* a punishment component to the proper coercion component of the confinement order. The court is influenced in these conclusions by Judge Hatter's decisions in *Castillo v. Barr*, CV 20-00605TJH (AFMx)) citing *Smith v. Washington* 781 F. App'x 595, 597-98 (9th Cir. 2019) [see Movant's Exhibit "J"] and the similar *Fraihat v. Wolf et al.*, ED CV 20-00590TJH (KSx)(C.D. Cal. March 30, 2020. But the court does accept also the Trustee's argument that none of these authorities are squarely on point as these all dealt with some other form of civil confinement, not the contempt we have here. But the question remains: does Mr. Gharib's continued confinement in Santa Ana jail impose any additional risk beyond the minimum required to continue a proper coercion?

The record is not entirely clear. The Trustee has offered a declaration from the jail manager, Jaime Manriquez. Mr. Manriquez testifies that the jail is well-run, the guards exercise reasonable precautions by wearing gloves, the guards and employees are subject to medical screening, all inmates over 60 (some 6-7), including contemnor, are housed together and contact with Mr. Gharib is minimal. Mr. Manriquez offers the opinion that the jail is a "safe place." All of this may well be true, but no one can deny that COVID-19 is a deadly disease, is highly contagious and has killed over 119,000 people worldwide, with the count rising daily. Contemnor, of course, provides a flood

**United States Bankruptcy Court
Central District of California
Santa Ana
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Hearing Room

5B

4:00 PM

CONT... **Kenny G Enterprises, LLC**

Chapter 7

of anecdotal evidence, articles regarding problems with the incarcerated population elsewhere and the alarming statistics we have all become used to in the media. The problem is that although none at the Santa Ana jail at present may exhibit any symptoms, nobody can speak for what tomorrow will bring. This virus has shown an ability to cut down any rosy predictions about our meager barriers to infection. The court must be concerned with whether *its order* raises the chances of infection on an *involuntary* basis. If released on furlough, Mr. Gharib, of course, might still become infected. But it will be because of *his* lack of precaution or *his* own bad luck, not upon what the court has imposed.

Since coercion is the only legitimate purpose of continued confinement, the court must consider whether alternative means to that end exist until the pandemic has passed. Judging from the papers filed by the Public Defender on his behalf, contemnor is willing to assume certain duties imposed by order as an alternative to continued confinement for a period of 90 days, but subject to an order to return for re-confinement at the end of this period (absent a purging of the contempt in meantime). These furlough duties, if obeyed, will not be easy or comfortable and represent a continued form of coercion; perhaps not as much as a jail cell but not convenient either. Both sides have at the court's request stated the terms of furlough they would accept. Unsurprisingly, each side proposes certain terms that are either too draconian, unworkable, transparently ineffective, or entirely inconsistent with the overall purpose to be accomplished. Comparisons to terms of post-conviction or even pretrial detention in criminal matters such as the *Avenatti* case are only of marginal assistance. Some points from each side are adopted below but the court has added its own. It is indeed unfortunate that, according to the April 13 email from Douglas Bys of U.S. Pretrial and Probations Services, his agency is not available at all to assist in a monitoring function for the furlough. But the court does the best it can.

Therefore, the court will order a release on furlough to July 30 on the

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 15, 2020

Hearing Room 5B

4:00 PM

CONT... Kenny G Enterprises, LLC
following terms and conditions:

Chapter 7

1. This is a furlough, not a determination that the contempt has been purged. Consequently, the liberty granted hereunder is temporary and timed to coincide with likely passing of the most virulent period of the pandemic. It can be withdrawn at any time. The contemnor will present himself back for possible re-incarceration **July 30, 2020 at Courtroom 5B at 2:00 p.m.**, at which time he will be remanded again to custody of the U.S. Marshals, absent other order.
2. Mr. Gharib is remanded to the custody of his son, Aryan Gharib (sometimes "custodian"), who is to undertake all reasonable efforts to see that the terms and conditions of this furlough are implemented. The custodian is to file a document with assistance of the Public Defender, under penalty of perjury, submitting to the jurisdiction of this court, accepting that an order of contempt may be a consequence of violation of this order and specifically acknowledging the terms of this furlough order. Such submission in suitable format is a pre-condition to release of the contemnor on furlough.
3. Since Pretrial and Probation Services is not available, the court seeks the assistance of a neutral to undertake certain monitoring functions required under this order. The Trustee in his sole discretion shall hire an "adjustor" or "agent" such as Independent Management Services, any retired peace officer, or similar person of unquestioned reliability and discretion, to perform the certain limited duties of monitoring specified hereunder. Such hired person or agency shall hereinafter be referred to as "the Monitor." The Monitor shall have the right, by written pre-consent of Mr. Gharib and Aryan Gharib (to be documented by Public Defender), and by reason of this order, to call upon the contemnor at any time, day or night, without prior notice, in person or via telephone, for the sole purpose of verifying the

**United States Bankruptcy Court
Central District of California
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Wednesday, April 15, 2020

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4:00 PM

CONT...

Kenny G Enterprises, LLC

Chapter 7

contemnor's presence at the places of confinement as described hereinbelow. Check-in via telephone can occur as often as once per day and in-person visit not more than once per 72-hour period, or as seldomly as the Trustee decides in his discretion. As a "wild card", however, the Monitor may conduct during the period of this furlough up to three unscheduled visits not complying with the 72-hour restriction. The Monitor need not preschedule with either the contemnor or the custodian as the very purpose of this provision is to monitor contemnor's whereabouts. The Trustee will report by filing with this court, copy to the contemnor, any violation reported by the Monitor. It is not desired nor anticipated that the Monitor challenge anyone, nor seek forcible entry, nor in any way disturb the peace. The monitor is to observe all COVID-19 "physical distancing" guidelines such as six foot separation, use of masks and gloves, etc. The function is solely to monitor the presence of the contemnor in the places required by this order. A report that the doorbell went unanswered after repeated attempts, or that contemnor failed to come to the door after request, shall be reported by the Monitor as a probable violation. The cost of the Monitor shall be borne by the Trustee and, after review by the court, is allowable as an administrative claim. Contemnor and Aryan Gharib shall extend every cooperation and courtesy to the Monitor, and any lack of cooperation will be reported to the court.

4. Each covenant and condition in paragraphs 1-16 of "Kenneth Gharib's Proposed Conditions of Temporary Furlough in Light of COVID-19..." filed herein April 10, 2020 are adopted and made part of this Order and will be separately stated in the form of Order resulting from this hearing. However, the 90-day period mentioned at paragraph 16 of that document is modified to coincide with the July 30, 2020 date mentioned at paragraph 1 of this Order, even though that period is

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4:00 PM

CONT...

Kenny G Enterprises, LLC
slightly more than 90 days.

Chapter 7

5. Contemnor shall comply with national, state and local public-health orders regarding COVID-19, including California's Executive Order N-33-20 (March 19, 2020) and, if applicable, the Los Angeles "Safer at Home" Order, Public Order Under City of Los Angeles Emergency Authority (March 19, 2020) and/or the Public Health Order issued by the Orange County Health Officer of March 17, 2020, as amended. Indeed, nothing in the order shall be construed as requiring or encouraging anyone to violate applicable health directives.
6. If the contemnor should leave the places of confinement specified in this order for medical visit (the only permissible reason) he is to notify the Monitor and Trustee 24 hours in advance, unless it is a true emergency, in which case contemnor and the custodian shall notify Trustee and the Monitor of the medical visit, the places and times, telephone contact for the medical office, and the nature of the emergency as soon as possible but not later than 8 hours after the visit.
7. In addition to the agreed provisions in Kenneth Gharib's Proposed Conditions..." and consistent therewith, at no time during the period of this furlough shall the contemnor possess or have access to *any* device allowing access to the internet. He may only use a non-internet connected telephone, one that has been examined and approved by either the Trustee or the Monitor. The Trustee and/or Monitor will be temporarily (for the period of this furlough) added as a party with full access to all calls initiated or received on the said device in addition to (or consistent with) the provisions of ¶11 of contemnor's "Proposed Conditions."
8. At no time during the period of this furlough shall the contemnor have access in any manner to the banking system, not only to not deposit,

**United States Bankruptcy Court
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Wednesday, April 15, 2020

Hearing Room

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CONT...

Kenny G Enterprises, LLC

Chapter 7

transfer or withdraw, but also not to observe or communicate in any manner with a financial institution nor to any third party regarding access to the financial system nor to execute any transaction on his behalf or at his behest.

9. In the "Kenneth Gharib's Proposed Conditions..." mention is made that custodian intends to obtain a new residence in near future, to which contemnor will travel and reside after the initial COVID-19 quarantine period. Custodian is to inform the Trustee of the address before the lapse of the quarantine period and Trustee and/or the Monitor will be given access on reasonable notice to inspect this location (observing COVID-19 physical distancing directives) before contemnor takes up residence, and, aside from the Monitor's duties mentioned above, on reasonable notice after his residence commences. The court expects that such location will have a separate room for contemnor to reside, and entrance and exit only via a common door, such that contemnor's exit should be observed by the custodian. If the custodian should observe a violation of this order by contemnor, custodian has the duty to immediately contact the Trustee and Monitor. Failure to do so will be construed as a violation of this order by custodian.
10. The parties will exchange all telephone numbers, addresses, email addresses and contact means as necessary to comply with this order.

The court harbors no illusion that these terms are foolproof. They will require a degree of cooperation and good faith. Any violation or suspected violation can be reported by the Trustee and an emergency hearing scheduled on minimal or, if the proper showing is made, no notice to contemnor. A violation found by the court may result in immediate arrest and re-incarceration and/or further order of contempt. The parties are invited to comment on each of the above, and/or to

**United States Bankruptcy Court
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4:00 PM

CONT...

Kenny G Enterprises, LLC

Chapter 7

propose reasonable additions or subtractions.

Grant furlough on enumerated conditions until further hearing July 30.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Ronald N Richards

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

Wednesday, April 22, 2020

Hearing Room 5B

10:00 AM

8:20-10538 Mary Bryant

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 16

Tentative Ruling:

Tentative for 4/22/20:

Grant, and may include in rem language. The debtor has filed a request that the hearing be continued 60 days, citing the COVID-19 pandemic as grounds. Also, an assertion is made that there is a state moratorium on foreclosure. While that might be true the main basis for relief is "cause" based on previous conduct, so the quarantine issues seem less compelling. But the court will hear argument.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Mary Bryant

Pro Se

Movant(s):

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

Wednesday, April 22, 2020

Hearing Room 5B

10:00 AM

CONT... Mary Bryant
U.S. BANK NATIONAL

Represented By
Diane Weifenbach

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 22, 2020

Hearing Room 5B

10:00 AM

8:20-10681 April Joy Gonzales Alvarado

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK TRUST NATIONAL ASSOCIATION
Vs
DEBTOR

Docket 16

***** VACATED *** REASON: OFF CALENDAR - CASE IS DISMISSED -
ORDER ENTERED 4-16-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

April Joy Gonzales Alvarado Pro Se

Movant(s):

U.S. Bank Trust National Represented By
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**

Wednesday, April 22, 2020

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 3-26-20)**

Docket 1

Tentative Ruling:

Tentative for 4/22/20:
See #3.1

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:
Status conference continued to coincide with Motion For Default Judgment filed 3/19.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to

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10:00 AM

CONT... Sohayl Khusravi

Chapter 7

implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 1/23/2020:
Where the the default and prove up?

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.

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Wednesday, April 22, 2020

Hearing Room 5B

10:00 AM

CONT... **Sohayl Khusravi**

Chapter 7

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
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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Wednesday, April 22, 2020

Hearing Room 5B

10:00 AM

8:18-12723 Sohayl Khusravi

Chapter 7

Adv#: 8:18-01200 Hudson Insurance Company v. Khusravi et al

#3.10 Amended Motion for Default Judgment

Docket 25

Tentative Ruling:

Tentative for 4/22/20:

There is an adequate showing in prove-up of a monetary sum owed under a breach of contract theory to Plaintiff of \$61,127.61. There is virtually no showing of why this sum is non-dischargeable in bankruptcy under any provision of §523(a)(2), (4) or (6). Moreover, the form of judgment submitted ignores this issue as well. If all that is desired at this point is allowance of a claim against the estate, that sum can be allowed. But since this complaint was drafted as a non-dischargeability complaint, and not merely as a breach of contract action (which is normally dischargeable), the court suspects something more is requested. Plaintiff should resubmit with evidence supporting the *non-dischargeable nature of the obligation*. Because this is a default, Plaintiff need not submit anything elaborate as it is aided by the doctrine of "deemed admitted". But at least something would assist the court in finding in favor of Plaintiff and in the interest of justice. A further hearing is not necessarily required as supporting evidence may be submitted in chambers.

Continue.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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5B

10:00 AM

CONT... Sohayl Khusravi

Chapter 7

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
Michael N Nicastro

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**

Wednesday, April 22, 2020

Hearing Room 5B

11:00 AM

8:20-10441 Scot Matteson

Chapter 7

#4.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against an Individual
(cont'd from 4-07-20)
(cont'd from 4-08-20 per order approving second stip. to cont. status hrg entered 4-03-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO MAY 20, 2020 AT 11:00 A.M. PER ORDER APPROVING THIRD STIPULATION TO CONTINUE STATUS HEARING AND TO EXTEND TIME TO FILE RESPONSE TO INVOLUNTARY PETITION FILED BY ELIZABETH NIGRO & ASSOCIATES, APC ENTERED 4/13/2020**

Tentative Ruling:

Tentative for 3/10/20:

The timing in this case is muddled because two summons were issued and the deadline to respond to the reissued summons is after the hearing on the status conference in this case. It might be best to continue this status conference to March 17, 2020 at 10:00 a.m. so that the court can evaluate any response that is filed. If no response is received, the order for relief should be entered.

Party Information

Debtor(s):

Scot Matteson

Pro Se

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

Wednesday, April 22, 2020

Hearing Room 5B

11:00 AM

8:18-13608 Darren Dean McGuire

Chapter 7

#5.00 Motion for: (1) Approval of the Settlement between the Trustee and Darren Dean McGuire; and (2) an Order Revoking any Technical Abandonment of the Broker Claims

Docket 118

***** VACATED *** REASON: CONTINUED TO 6-02-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON TRUSTEE'S MOTION TO APPROVE COMPROMISE PENDING
ENTERED 4-13-20**

Tentative Ruling:

- NONE LISTED -

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
Jason B Komorsky

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

Wednesday, April 22, 2020

Hearing Room 5B

11:00 AM

8:19-12516 Ultimate Brands Inc

Chapter 7

#6.00 Motion to Authorize Disbursement of Cash Collateral to Secured Lender Pursuant to Stipulation

Docket 359

Tentative Ruling:

Tentative for 4/22/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 22, 2020

Hearing Room 5B

11:00 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
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Wednesday, April 22, 2020

Hearing Room 5B

11:00 AM

8:19-10427 Anthony Rey Magdael Macaranas and Nicole Mae

Chapter 7

**#7.00 Trustee's Final Report And Applications For Compensation:
(con't from 4-21-2020)**

WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE

Docket 25

Tentative Ruling:

Tentative for 4/22/20:
Allow as prayed. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Anthony Rey Magdael Macaranas

Represented By
Donald W Sieveke

Joint Debtor(s):

Nicole Mae Magsombol Macaranas

Represented By
Donald W Sieveke

**United States Bankruptcy Court
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CONT... Anthony Rey Magdael Macaranas and Nicole Mae

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Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 22, 2020

Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#8.00 Emergency Motion On Kenneth Gharib's Motion For Release
(OST Signed 4-01-20)
(cont' from 4-15-30)

Docket 808

Tentative Ruling:

Tentative for 4/22/20:

This is a continued hearing on the contemnor's motion for a lifting of the incarceration order that this court has had in place for nearing five years. As is oft repeated, this is not a criminal proceeding, but rather a question of civil contempt. Combined with the onslaught of COVID-19 and all that it implies, the court finds itself in uncharted territory. The court incorporates its tentative decision from last Wednesday, April 15, and repeats it here *verbatim*. To be clear, nothing in this tentative should be read to suggest that anything in the court's prior tentative is overruled or otherwise altered. So, it is with considerable disappointment that, rather than considering the wording of an agreed order for immediate entry, as expected, the court reads briefs from both sides arguing yet new issues, seeming to go off on tangents never contemplated in the earlier decision and seeming to again dispute the whole idea of a furlough. As the court earlier stated, the solution is not perfect. It may not even be very good. But it's the best we can do. The court will address the major points raised this time around, in hope that an actual order will result.

1. Mr. Richards is not a prosecutor. Of course he represents an interested party with a pecuniary interest, the Trustee. That is so obvious that it needs no re-stating. That might have some relevance were there any valid comparison to the role of prosecutor. But the court's furlough order does not and never has envisioned any prosecutorial role for Mr. Richards. The court supposes the argument is raised because under the

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proposed order some minor discretion is afforded to the Trustee acting through Mr. Richards. But the discretion is only within strict parameters set by the court and only applies in evaluating information to be presented but not yet present in the record. There is nothing nefarious or even unusual about this. So, the comparison to a prosecutor is very wide of the mark.

2. An issue is raised over whether the Trustee must see the lease of the new premises being rented by the custodian and inspect same, rather than rely upon a "virtual tour" video or contemnor's or custodian's description. The court was clear; the trustee has a right to inspect **before** contemnor is released. The layout and suitability are too important to the overall success of this furlough to do otherwise. On the question of whether Mr. Richards or the Trustee have some sinister motive thereby to sabotage or interfere with the lease, the court cannot imagine such a motive and, should such unprofessional behavior occur, there would be literal hell to pay. The Trustee knows this.
3. The parties regrettably either could not agree to the identity of a monitor, or the contemnor or custodian declined to pay half. Fine. Mr. Ni Castro is confirmed as "monitor" and his fees and expenses will be at the sole expense of the estate. Yes, the contemnor is correct; the monitor is a neutral and shall file any and all reports directly with the court, with copies sent to both sides. Mr. Ni Castro is known to the court and is a prominent member of the insolvency bar. The court has every confidence he would discharge his duties as a neutral as called for in the furlough order.
4. There is a dispute, apparently, over contemnor's driver's license and passport. Simple. The driver's license will be turned over to the custody of Public Defender pending further order. The court

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cannot see a reason for contemnor to have this in his possession pending conclusion of this furlough in any event. The passport is treated the same. If the passport is lost, which seems to be implied in the papers, written attestation of such loss under penalty of perjury will be filed **and** contemnor will obtain a certificate of cancellation from the Secretary of State.

5. A new issue has been raised about an ankle monitor. This was only obliquely raised before in the context of Pretrial Services possibly being involved. We now know that agency will not be involved; yet, it seems to the court a good idea. As such, the court will hear argument as to whether the wearing of an ankle monitor should be mandatory. It would be at the expense of the estate. As a "bargaining chip" to maintain symmetry, and as an incentive to consent, the "in person" check ins by the monitor would be reduced from once per 72 hours to once per week (measured Sunday 12:00 a.m. to Sunday 11:59 p.m.) but saving the three "wild cards" mentioned in the last tentative. Contemnor is advised that an ankle monitor may still be imposed without his consent, in which case the original protocol will govern.
6. Contemnor repeats his argument that the furlough order would be in some ways even more oppressive than detention orders imposed on criminal defendants awaiting trial or sentencing. While that might be true in some respects, contemnor misses that this is his request for a furlough, which the court has reluctantly considered despite some glaring risks. If he thinks the conditions are too oppressive, he can withdraw his motion and ride out the pandemic in Santa Ana jail.

The court will hear arguments over whether any of these conditions are for some reason unjust or unworkable. Given the delays, it now

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regrettably appears that actual implementation of the order is still some days away. Certain documents, inspections and details still need to be accomplished/reviewed. The court will hear argument as to whether each point must be resolved before furlough is granted and whether an agreed time and place can be now established, as coordination with the Marshals and Santa Ana jail must still be undertaken. Alternatively, another week's delay may occur to Wednesday the 29th.

Tentative as above.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

This is a continued hearing on the motion of contemnor, Kenneth Gharib (sometimes "contemnor"), for immediate release from his confinement at the Santa Ana jail. Mr. Gharib is approaching his fifth year in confinement under this court's order of May 12, 2015 which was entered after he was found in contempt of the court's previous order requiring him to turnover certain monies on deposit constituting proceeds of property of the estate. The court has since the beginning of Mr. Gharib's confinement conducted some

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twelve or more status conferences. At each such status conference Mr. Gharib has alternatively argued that the money was invested in Iran (and lost there) or that it was for other reasons impossible to return. One recent reason offered via letter to the court by the contemnor's brother, Mr. Rashtabadi, was altogether different, i.e. that the money had all been lost on some vaguely described movie venture, and so could not be returned. None of the varying excuses offered were the least credible and so the court until now has found that Mr. Gharib continues in his contempt and continues to possess the proverbial keys to the jail cell. Consequently, the confinement order, in the court's view, continued to have its proper coercive effect. The confinement order has also thus far withstood several appeals filed by Mr. Gharib. In the recent several status hearings, the argument has changed from impossibility of purging the contempt to denial of due process by reason of the very length of the confinement as no longer "coercive." Until now the court has held the view, and still holds the view, that permissible coercion still applies justifying continued confinement.

But the calculus may have changed in the present motion. The court is vividly aware that Mr. Gharib has not, in these proceedings, been convicted of any crime. He has been held in contempt, a purely civil matter. The only legitimate purpose of the continued confinement is coercion, not punishment. The court does not doubt the point made by the Public Defender on behalf of contemnor, i.e. that 5th and 14th Amendment Due Process governs these proceedings, not the 8th Amendment prohibition against cruel and unusual punishment. In that regard, the court also accepts that the court must be even more solicitous that confinement does not pose any increased danger to the contemnor's health for to do so is to add *sub rosa* a punishment component to the proper coercion component of the confinement order. The court is influenced in these conclusions by Judge Hatter's decisions in *Castillo v. Barr*, CV 20-00605TJH (AFMx)) citing *Smith v. Washington* 781 F. App'x 595, 597-98 (9th Cir. 2019) [see Movant's Exhibit "J"] and the similar *Fraihat v. Wolf et al.*, ED CV 20-00590TJH (KSx)(C.D. Cal. March 30, 2020. But the court does accept also the Trustee's argument that none of these authorities

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are squarely on point as these all dealt with some other form of civil confinement, not the contempt we have here. But the question remains: does Mr. Gharib's continued confinement in Santa Ana jail impose any additional risk beyond the minimum required to continue a proper coercion?

The record is not entirely clear. The Trustee has offered a declaration from the jail manager, Jaime Manriquez. Mr. Manriquez testifies that the jail is well-run, the guards exercise reasonable precautions by wearing gloves, the guards and employees are subject to medical screening, all inmates over 60 (some 6-7), including contemnor, are housed together and contact with Mr. Gharib is minimal. Mr. Manriquez offers the opinion that the jail is a "safe place." All of this may well be true, but no one can deny that COVID-19 is a deadly disease, is highly contagious and has killed over 119,000 people worldwide, with the count rising daily. Contemnor, of course, provides a flood of anecdotal evidence, articles regarding problems with the incarcerated population elsewhere and the alarming statistics we have all become used to in the media. The problem is that although none at the Santa Ana jail at present may exhibit any symptoms, nobody can speak for what tomorrow will bring. This virus has shown an ability to cut down any rosy predictions about our meager barriers to infection. The court must be concerned with whether *its order* raises the chances of infection on an *involuntary* basis. If released on furlough, Mr. Gharib, of course, might still become infected. But it will be because of *his* lack of precaution or *his* own bad luck, not upon what the court has imposed.

Since coercion is the only legitimate purpose of continued confinement, the court must consider whether alternative means to that end exist until the pandemic has passed. Judging from the papers filed by the Public Defender on his behalf, contemnor is willing to assume certain duties imposed by order as an alternative to continued confinement for a period of 90 days, but subject to an order to return for re-confinement at the end of this period (absent a purging of the contempt in meantime). These furlough duties, if obeyed, will not be easy or comfortable and represent a continued form of coercion;

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perhaps not as much as a jail cell but not convenient either. Both sides have at the court's request stated the terms of furlough they would accept. Unsurprisingly, each side proposes certain terms that are either too draconian, unworkable, transparently ineffective, or entirely inconsistent with the overall purpose to be accomplished. Comparisons to terms of post-conviction or even pretrial detention in criminal matters such as the *Avenatti* case are only of marginal assistance. Some points from each side are adopted below but the court has added its own. It is indeed unfortunate that, according to the April 13 email from Douglas Bys of U.S. Pretrial and Probations Services, his agency is not available at all to assist in a monitoring function for the furlough. But the court does the best it can.

Therefore, the court will order a release on furlough to July 30 on the following terms and conditions:

1. This is a furlough, not a determination that the contempt has been purged. Consequently, the liberty granted hereunder is temporary and timed to coincide with likely passing of the most virulent period of the pandemic. It can be withdrawn at any time. The contemnor will present himself back for possible re-incarceration **July 30, 2020 at Courtroom 5B at 2:00 p.m.**, at which time he will be remanded again to custody of the U.S. Marshals, absent other order.
2. Mr. Gharib is remanded to the custody of his son, Aryan Gharib (sometimes "custodian"), who is to undertake all reasonable efforts to see that the terms and conditions of this furlough are implemented. The custodian is to file a document with assistance of the Public Defender, under penalty of perjury, submitting to the jurisdiction of this court, accepting that an order of contempt may be a consequence of violation of this order and specifically acknowledging the terms of this furlough order. Such submission in suitable format is a pre-condition to release of the contemnor on furlough.
3. Since Pretrial and Probation Services is not available, the court seeks

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the assistance of a neutral to undertake certain monitoring functions required under this order. The Trustee in his sole discretion shall hire an "adjustor" or "agent" such as Independent Management Services, any retired peace officer, or similar person of unquestioned reliability and discretion, to perform the certain limited duties of monitoring specified hereunder. Such hired person or agency shall hereinafter be referred to as "the Monitor." The Monitor shall have the right, by written pre-consent of Mr. Gharib and Aryan Gharib (to be documented by Public Defender), and by reason of this order, to call upon the contemnor at any time, day or night, without prior notice, in person or via telephone, for the sole purpose of verifying the contemnor's presence at the places of confinement as described hereinbelow. Check-in via telephone can occur as often as once per day and in-person visit not more than once per 72-hour period, or as seldomly as the Trustee decides in his discretion. As a "wild card", however, the Monitor may conduct during the period of this furlough up to three unscheduled visits not complying with the 72-hour restriction. The Monitor need not preschedule with either the contemnor or the custodian as the very purpose of this provision is to monitor contemnor's whereabouts. The Trustee will report by filing with this court, copy to the contemnor, any violation reported by the Monitor. It is not desired nor anticipated that the Monitor challenge anyone, nor seek forcible entry, nor in any way disturb the peace. The monitor is to observe all COVID-19 "physical distancing" guidelines such as six foot separation, use of masks and gloves, etc. The function is solely to monitor the presence of the contemnor in the places required by this order. A report that the doorbell went unanswered after repeated attempts, or that contemnor failed to come to the door after request, shall be reported by the Monitor as a probable violation. The cost of the Monitor shall be borne by the Trustee and, after review by the court, is allowable as an administrative claim. Contemnor and Aryan Gharib shall extend every cooperation and courtesy to the Monitor,

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and any lack of cooperation will be reported to the court.

4. Each covenant and condition in paragraphs 1-16 of "Kenneth Gharib's Proposed Conditions of Temporary Furlough in Light of COVID-19..." filed herein April 10, 2020 are adopted and made part of this Order and will be separately stated in the form of Order resulting from this hearing. However, the 90-day period mentioned at paragraph 16 of that document is modified to coincide with the July 30, 2020 date mentioned at paragraph 1 of this Order, even though that period is slightly more than 90 days.
5. Contemnor shall comply with national, state and local public-health orders regarding COVID-19, including California's Executive Order N-33-20 (March 19, 2020) and, if applicable, the Los Angeles "Safer at Home" Order, Public Order Under City of Los Angeles Emergency Authority (March 19, 2020) and/or the Public Health Order issued by the Orange County Health Officer of March 17, 2020, as amended. Indeed, nothing in the order shall be construed as requiring or encouraging anyone to violate applicable health directives.
6. If the contemnor should leave the places of confinement specified in this order for medical visit (the only permissible reason) he is to notify the Monitor and Trustee 24 hours in advance, unless it is a true emergency, in which case contemnor and the custodian shall notify Trustee and the Monitor of the medical visit, the places and times, telephone contact for the medical office, and the nature of the emergency as soon as possible but not later than 8 hours after the visit.
7. In addition to the agreed provisions in Kenneth Gharib's Proposed Conditions..." and consistent therewith, at no time during the period of this furlough shall the contemnor possess or have access to *any* device allowing access to the internet. He may only use a non-internet connected telephone, one that has been examined and approved by

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either the Trustee or the Monitor. The Trustee and/or Monitor will be temporarily (for the period of this furlough) added as a party with full access to all calls initiated or received on the said device in addition to (or consistent with) the provisions of ¶11 of contemnor's "Proposed Conditions."

8. At no time during the period of this furlough shall the contemnor have access in any manner to the banking system, not only to not deposit, transfer or withdraw, but also not to observe or communicate in any manner with a financial institution nor to any third party regarding access to the financial system nor to execute any transaction on his behalf or at his behest.
9. In the "Kenneth Gharib's Proposed Conditions..." mention is made that custodian intends to obtain a new residence in near future, to which contemnor will travel and reside after the initial COVID-19 quarantine period. Custodian is to inform the Trustee of the address before the lapse of the quarantine period and Trustee and/or the Monitor will be given access on reasonable notice to inspect this location (observing COVID-19 physical distancing directives) before contemnor takes up residence, and, aside from the Monitor's duties mentioned above, on reasonable notice after his residence commences. The court expects that such location will have a separate room for contemnor to reside, and entrance and exit only via a common door, such that contemnor's exit should be observed by the custodian. If the custodian should observe a violation of this order by contemnor, custodian has the duty to immediately contact the Trustee and Monitor. Failure to do so will be construed as a violation of this order by custodian.
10. The parties will exchange all telephone numbers, addresses, email addresses and contact means as necessary to comply with this order.

The court harbors no illusion that these terms are foolproof. They will require a degree of cooperation and good faith. Any violation or

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suspected violation can be reported by the Trustee and an emergency hearing scheduled on minimal or, if the proper showing is made, no notice to contemnor. A violation found by the court may result in immediate arrest and re-incarceration and/or further order of contempt. The parties are invited to comment on each of the above, and/or to propose reasonable additions or subtractions.

Grant furlough on enumerated conditions until further hearing July 30.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Ronald N Richards

**United States Bankruptcy Court
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Wednesday, April 29, 2020

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10:00 AM

8:18-11474 Brian G. Corntassel

Chapter 13

**#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER
(re-scheduled from 4-29-20 at 10:30 to 10:00 a.m. per courts own motion)**

HUNTINGTON SHORECLIFF, LP and HS MANAGEMENT, LP
Vs
DEBTOR

Docket 65

***** VACATED *** REASON: CONTINUED TO 5-13-20 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION ENTERED 4-22-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian G. Corntassel

Represented By
Kelly H. Zinser

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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10:00 AM

8:20-10378 Felipe Trujillo

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST

Vs

DEBTOR; AND THOMAS H. CASEY, CHAPTER 7 TRUSTEE

Docket 9

Tentative Ruling:

Tentative for 4/29/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Felipe Trujillo

Represented By
Daniel King

Movant(s):

Honda Lease Trust

Represented By
Vincent V Frounjian

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CONT... Felipe Trujillo

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:20-10987 Guadalupe E Marquez Cid

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

AMERICAN. HONDA FINANCE
Vs.
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 4/29/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Guadalupe E Marquez Cid

Represented By
Daniel King

Movant(s):

American Honda Finance

Represented By
Vincent V Frounjian

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CONT... Guadalupe E Marquez Cid

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 29, 2020

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10:00 AM

8:18-11227 Yudy Saidaly Canales

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 43

Tentative Ruling:

Tentative for 4/29/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Yudy Saidaly Canales

Represented By
Brian J Soo-Hoo

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry

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CONT... Yudy Saidaly Canales

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:17-11524 Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS

Docket 55

Tentative Ruling:

Tentative for 4/29/20:

Grant, absent a stipulation. Debtors are not privileged to default on confirmed plans in the hope that they can get further concessions, and so, the mere unanswered request for a stipulation, even if true, is not a basis for denying the motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Cheryl A. McCoy

Represented By
Anerio V Altman

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CONT... Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

Joint Debtor(s):

Bryan Anthony McCoy

Represented By
Anerio V Altman

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:17-14201 Christopher Anthony Hewlett

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

ABS LOAN TRUST VI
Vs
DEBTOR

Docket 53

Tentative Ruling:

Tentative for 4/29/20:
unless current or stipulation achieved. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Christopher Anthony Hewlett

Represented By
Christopher J Langley

Movant(s):

ABS Loan Trust VI

Represented By
Megan E Lees
Robert P Zahradka

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT... Christopher Anthony Hewlett

Chapter 13

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**

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-12162 John Louis Katangian and Shelline Marie Katangian

Chapter 7

#6.10 Motion for relief from the automatic stay REAL PROPERTY

EASTERN SAVINGS BANK
Vs
DEBTORS

Docket 102

Tentative Ruling:

Tentative for 4/29/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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):

Eastern Savings Bank, fsb

Represented By

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

**CONT... John Louis Katangian and Shelline Marie Katangian
Donna L La Porte**

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-14531 160 Shorewood Drive LLC

Chapter 11

#7.00 Motion for relief from the automatic stay REAL PROPERTY

ARON ABECASSIS, TRUSTEE OF THE ARON ABECASSIS REVOCABLE TRUST DATED 4/14/04; NEAL COHEN, TRUSTEE OF THE NEAL I COHEN RECOVABLE TRUST DATED SEPTEMBER 24, 2018

Vs.

DEBTOR

(cont'd from 3-31-20 per stip. & order entered 3-19-20)

(re-scheduled to 4-29-20 at 10:00 a.m. - not 10:30 a.m. per courts own motion)

Docket 25

Tentative Ruling:

Tentative for 4/29/20:

Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

160 Shorewood Drive LLC

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 29, 2020

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10:00 AM

CONT... 160 Shorewood Drive LLC

Chapter 11

Movant(s):

Aron Abecassis, Trustee of the Aron

Represented By
Julian K Bach

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 Amended Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 3-24-20)
(cont'd from 4-08-20)

JONATHAN BALL
Vs
DEBTOR

Docket 481

Tentative Ruling:

Tentative for 4/29/20:
grant absent stipulation. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:
Status? As stated in earlier hearings the court is inclined to remove the stay 60 days out (now down to 45) unless the Trustee articulates a compelling reason to continue the delay. If there is to be no or minimal dividend anyway,

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10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

the court fails to see the waste of resources argument. In any event, the Trustee cannot expect to hold everyone else up while he makes up his mind. The parties were reportedly exploring a stipulation; so, where are we?

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/24/20:

The movant wants to proceed with trial in New Jersey although he has filed a proof of claim which, absent objection, would be allowed as a matter of course. Complicating matters is a reported affirmative defense / cross-claim. Trustee is uncertain whether there will be a dividend in the case making engagement of counsel likely a waste of resources. The problem arises in that Trustee does not want to take a definitive position, and that is problematic as we cannot detain the other parties indefinitely or unnecessarily.

Grant effective 60 days from entry of this order unless the Trustee affirmatively seeks an extension of the stay. Only liquidation of claims is allowed in any case, no levies absent further order.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

**United States Bankruptcy Court
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10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Movant(s):

Jonathan Ball

Represented By
Richard T Baum

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:20-10265 Judith Kim Chun

Chapter 7

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

MARIA DELIA GUTIERREZ, AS TRUSTEE OF THE MARIA DELIA
GUTIERREZ LIVING TRUST
Vs.
DEBTOR

Docket 13

Tentative Ruling:

Tentative for 4/29/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Judith Kim Chun

Represented By
Raymond J Seo

Movant(s):

Maria Delia Gutierrez

Represented By
Nicholas W Gebelt

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT... Judith Kim Chun

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, April 29, 2020

Hearing Room 5B

10:00 AM

8:16-11969 Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

#10.00 Motion For Adequate Protection Or In The Alternative, Relief from Automatic Stay
(cont'd from 3-17-20)
(rescheduled from 4-28-2020 at 10:30 a.m per court)

JPMORGAN CHASE BANK
Vs.
DEBTORS

Docket 86

Tentative Ruling:

Tentative for 4/29/20:

Have the parties reached an understanding, or can debtors provide an explanation consistent with the tentative?

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/17/20:

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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT...

Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

This is the motion for relief of stay brought by JP Morgan Chase Bank.

It is alternatively characterized as a request for adequate protection. The debtors are almost 4 years into their five-year plan. But for reasons never explained in the papers, the debtors have not paid property taxes on the subject property commonly known as 16317 Filbert Street, Fountain Valley, CA. for either 2018 or 2019. With penalties and fees according to the bank this is now a \$5942.16 obligation and climbing owed to the County. Both sides at various points characterize the question solely as one of "adequate protection." From this premise debtors argue that the bank can't complain since it is in first position securing about \$245,000 on a property worth, according to debtor, \$650,000. So, as the argument goes, the debtors could continue not paying their property taxes for several years to come and still not threaten, at least mathematically, to put the bank into an unsecured position even though by statute all liens are junior to County taxes. So, one supposes, under this argument the bank must simply lump it?

The court suggests many of the premises behind these arguments are wrong or wrong-headed. First, 11 U.S.C. §362(d)(1) provides relief of stay "for cause *including lack of adequate protection...*" In other words, "cause" can be based on things other than a narrow calculation of whether the complaining creditor is adequately protected. "Cause" can also go the behavior of the debtors including issues of bad faith. The court presumes that there is a covenant in the trust deed requiring the debtors to keep current on property taxes. The court also presumes that the confirmed plan required that debtors perform ongoing obligations under the deed of trust without modification. So, what we have in effect are both breaches of those covenants and *post-petition plan defaults*. That is consequently very much a "cause" question, and the possibly lackadaisical tone emanating from debtors on this point is very concerning. It should be well-known by now that this court takes a very dim view of post-confirmation plan defaults. Moreover, relief of stay on account of a Chapter 13 plan default may just the sort of situation for which the deliberately broad and flexible "for cause" provision

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10:00 AM

CONT... Christopher E. Meyer and Rebecca Shoda-Meyer Chapter 13
was designed. See *In re Carona*, 254 B.R. 364, 367 (Bankr. S.D. Tex. 2000).

Of course, the court would prefer debtors complete their plan and keep their home. A large step in that direction, however, will have to be an attitude adjustment and recognition that remedial steps must be taken immediately as that goal is in some jeopardy. The court will hear argument on the points raised.

No tentative

Party Information

Debtor(s):

Christopher E. Meyer

Represented By
Joseph A Weber

Joint Debtor(s):

Rebecca Shoda-Meyer

Represented By
Joseph A Weber

Movant(s):

JPMORGAN CHASE BANK,

Represented By
Caryn Barron
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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01098 Joseph v. United States Of America

#11.00 STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.
(con't from 12-5-19 per order continuing status conference ent. 11-22-19)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)

Docket 1

*** VACATED *** REASON: CONTINUED TO 8-6-20 AT 10:00 A.M.
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 4-28-20

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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Wednesday, April 29, 2020

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
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

**#12.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence
(con't from 12-12-19 per order cont. s/c entered 12-04-19)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-06-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 4-20-20**

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

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

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

Wednesday, April 29, 2020

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)]
(cont'd from 4-23-20 per courts own motion)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/29/20 AT 10:00 A.M.
PER ORDER ENTERED 4-13-20**

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
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Wednesday, April 29, 2020

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
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-11633 Timothy M Childress

Chapter 7

Adv#: 8:19-01114 Fleet Logic LLC v. Childress

#14.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523(a)(2), 523(a)(4), and 523(a)(6) (cont'd from 4-23-20 per court's own mtn 9-24-19) (rescheduled from 4-30-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-29-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION FOR ORDER TO CONTINUE
STATUS CONFERENCE ENTERED 4-06-20**

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 Nicastr

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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Wednesday, April 29, 2020

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

#15.00 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 2-27-20 per order approving stip. ent 2-27-20)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)

Docket 12

***** VACATED *** REASON: CONTINUED TO AUGUST 6, 2020 AT
10:00 A.M. PER ORDER ENTERED 4/13/2020**

Tentative Ruling:

Tentative for 2/27/20:

Where is the joint pre-trial stipulation? What is status? Should case be dismissed for failure to prosecute?

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.

Party Information

Debtor(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Defendant(s):

U.S. Department of Education

Pro Se

Wells Fargo Education Financial

Pro Se

Nel Net Loan Services

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT... Hutton Douglas Michael Brown

Chapter 7

Plaintiff(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-10414 James Michael Roberts

Chapter 7

Adv#: 8:19-01083 Peltier v. Roberts

**#16.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
(set from s/c hrg held on 8-29-19)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-06-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE ENTERED 4-07-20**

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.

Party Information

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
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:18-14436 Juan Jesus Rojas de Borbon

Chapter 11

**#17.00 Confirmation of Chapter 11 Plan
(set from disclosure stmt hrg held 2-26-20)**

Docket 87

Tentative Ruling:

Tentative for 4/29/20:

This plan is likely confirmable. Debtor notes that the absolute priority rule likely finds unusual cation here: mainly due to the fact that there is no dissenting class of unsecured creditors. Is this true as to Class 2A, which did not vote? Thus, Debtor concludes that the absolute priority rule is probably inapplicable in the usual sense. Instead: Debtor asserts that he will be providing "new value" in the amount of \$5,000. By doing so, Debtor argues, the present equity owner may fully retain his equity interests in the reorganized debtor even though there is no real "dissenting class" to accommodate. (See Debtor's confirmation brief at pp. 24-26).

Although Debtor's plan is likely confirmable, it must be amended to take out subsection (D) from section III of the plan. This subsection, entitled "Termination of Obligations In The Event of Unprocessed Payments" states:

"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; 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." (Plan: pp. 18-19)

This provision has created problems when it has surfaced in other cases. Debtor's counsel should be reminded that such a provision has previously been found to be offensive to equity (as counsel should remember). As such,

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10:00 AM

CONT... Juan Jesus Rojas de Borbon

Chapter 11

the plan is likely confirmable once this provision is removed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:

Assuming an amendment providing a timeline for when the bankruptcy court in Kentucky might approve his employment, the D.S. may be distributed and a confirmation date set.

Tentative for 12/4/19:

New plan to be filed not later than January 30, 2020.
Continue to February 26, 2020 at 10:00AM.

Tentative for 10/30/19:

Status?

Tentative for 8/7/19:

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

CONT... Juan Jesus Rojas de Borbon

Chapter 11

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
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-12812 Legrace Corp

Chapter 11

**#18.00 Individual Debtor's Disclosure Statement In Support Of Plan Of Reorganization
(cont'd from 3-11-20)**

Docket 93

Tentative Ruling:

Tentative for 4/29/20:

The U.S. Trustee's comments are well-taken and must be addressed before this version of the disclosure could be approved. Indeed, references are made to the Plan to accompany the disclosure, but the plan itself was not amended and references to the plan in the amended disclosure make the whole confusing. Perhaps recognizing that this disclosure is still deficient, debtor asks for more time in view of the pandemic. The court will hear argument on this point. But this disclosure is NOT APPROVED.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/11/20:

The form used is for individual debtors, whereas debtor is a corporation. Further, the useable informaion is almost non-existent. Apparently,

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Hearing Room 5B

10:00 AM

CONT... Legrace Corp

Chapter 11

unsecured creditors are paid nothing, yet no discussion of absolute priority rule appears anywhere.

Continue for revision.

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, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-11525 Christopher John Windisch and Mimoza Windisch

Chapter 11

**#19.00 Post-Confirmation Status Conference Re: Chapter 11 Plan
(set from confirmation hrg held on 12-18-19)**

Docket 46

Tentative Ruling:

Tentative for 4/29/20:

Does a further status conference in, say, 4 months make sense? Will the reorganized debtor seek to administratively close the case in meantime?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 12/18/19:

Confirm. Set status conference post confirmation.

Tentative for 10/23/19:

Approve. Set deadlines and confirmation hearing.

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT... Christopher John Windisch and Mimoza Windisch

Chapter 11

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, April 29, 2020

Hearing Room 5B

10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

**#20.00 Post- Confirmation Status Conference Hearing RE: Chapter 11 Plan
(set from confirmation hrg held on 7-18-19)
(cont'd from 12-11-19)**

Docket 32

Tentative Ruling:

Tentative for 4/29/20:

Continue approximately 4 months with expectation of a motion for final decree in meantime.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 12/11/19:

Continue to April 30, 2020. Court expects a final decree motion in interim.
Appearance waived.

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT... Sococo, Inc.

Chapter 11

Tentative for 7/18/19:
No tentative.

Tentative for 7/2/19:
No tentative.

Party Information

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, April 29, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#21.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 2-26-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-22-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 4-23-20**

Tentative Ruling:

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#22.00 Motion for relief from the automatic stay PERSONAL PROPERTY

FORD MOTOR CREDIT COMPANY
Vs
DEBTOR

Docket 154

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER ENTERED 4-20-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Ford Motor Credit Company LLC

Represented By
Randall P Mroczynski

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

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

PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR

Docket 53

*** VACATED *** REASON: CONTINUED TO 7-22-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 4-23-20

Tentative Ruling:

Tentative for 2/26/20:

If all that is requested is that both sides be free to complete the state court action, including post trial motions and appeals, to final orders, that is appropriate. Enforcement stes will require further orders of this court.

Grant as clarified.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:20-10143 **Bridgemark Corporation**

Chapter 11

#24.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 2-26-20)

Docket 54

***** VACATED *** REASON: CONTINUED TO 7-22-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 4-23-20**

Tentative Ruling:

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

1. Basic Background Facts

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately \$42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than \$25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not appear to be any other debts listed as disputed, contingent, or unliquidated. The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT... **Bridgemark Corporation**

Chapter 11

because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court trial this testimony was elicited:

"We cannot pay the 27 million We have no ability to pay any of this. ... I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done." Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the \$27 million in compensatory damages at \$1 million per year, interest-free, over 27 years. See *Id.* at 3156:20-23 ["We can't pay it. ... If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.... It just goes down and down and down." *Id.* at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

2. Motion to Dismiss & Relief from Stay Standards

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

Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

CONT...

Bridgemark Corporation

Chapter 11

Section 1112(b) of the Bankruptcy Code provides:

"[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id.* § 1112(b)(4)(A), and "gross mismanagement of the estate," *Id.* § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section ... for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.'"]. Thus, the shorthand phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or feelings. Instead, the question

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CONT... **Bridgemark Corporation**

Chapter 11

is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.*

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. *See e.g., In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the litigation"; and
- "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 29, 2020

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CONT...

Bridgemark Corporation

Chapter 11

prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes and citations omitted).

"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood)*, 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

3. Was Debtor's Petition Filed for a Proper Purpose?

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917–18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013) where the court found:

Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the

**United States Bankruptcy Court
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Wednesday, April 29, 2020

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CONT...

Bridgemark Corporation

Chapter 11

judgment or cover the cost of a supersedeas bond. The bankruptcy court found that the Fraud Judgment amounted to over \$12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id.* It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation.'" *Marshall*, 721 F.3d at 1048 (quoting 298 B.R. at 681)). PDC persuasively argues that it would be inappropriate to infer a broader rule from *Marshall*. PDC argues with some

**United States Bankruptcy Court
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CONT... **Bridgemark Corporation**

Chapter 11

persuasion that the other cases cited by Debtor were ones in which the courts based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id.* at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id.*

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately \$3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id.* at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id.* The debtor later amended his plan to provide that if the judgment were upheld on appeal, he would liquidate his assets and give the proceeds to the judgment creditor. *Id.* The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of the circumstances" warranted dismissal of the case for cause. *Id.* at *4.

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CONT...

Bridgemark Corporation

Chapter 11

PDC argues that Debtor has admitted in the authorizing resolution attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11" Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. After all, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to make a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), *aff'd*, 565 B.R. 527 (S.D.N.Y. 2017), *aff'd*, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets" As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26, 2011).

PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with competing demands to Debtor's assets. All other claims against Debtor are *de minimis* relative to the Judgment, and also appear to be undisputed. Cf. *In re*

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CONT... **Bridgemark Corporation**

Chapter 11

Mense, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately \$4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than \$700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a reorganization is likely not feasible due to the enormous judgment debt and Debtor's ever diminishing product source. The court is also not impressed

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CONT... **Bridgemark Corporation**

Chapter 11

with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable extension to answer these questions about just how probable a reorganization is or can be despite these obstacles. In this the court is uninterested in

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Wednesday, April 29, 2020

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CONT... Bridgemark Corporation Chapter 11

platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§ 1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 29, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

#25.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-22-20 AT 11:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 4-22-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Defendant(s):

Placentia Development Company

Pro Se

Plaintiff(s):

Bridgemark Corporation

Represented By
Erin E Gray
James KT Hunter
William N Lobel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 29, 2020

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11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#1.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 3-25-2020)

Docket 93

*** VACATED *** REASON: CONTINUED TO 7-22-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 4-23-20

Tentative Ruling:

Tentative for 3/25/20:

Stipulation to continue to 4/29/20 expected per phone message. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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

Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

8:13-16077 John M McWilliams

Chapter 7

#2.00 Debtors Motion for Order Re: Reopen Chapter 7 Bankruptcy to Prosecute Debtors Claims under Section 524 of the Bankruptcy Code Against Creditor Whose Claim Was Discharged

Docket 20

Tentative Ruling:

Tentative for 4/29/20:

It is somewhat curious that none of the interested parties filed a response of any kind to this motion. A look at the proof of service shows that notice of this motion was only sent out to a few individuals. It is not clear if any of the parties that would be defendants in Debtor's proposed future adversary proceeding were served with copies of this motion. None of the names on the service list match the names or contact information listed in Educap's proof of claim. Similarly, Gaba Law does not appear to have been served a copy of this motion either. It is unclear whether either or both of those entities, as interested parties are due notice of this motion. However, the former Trustee was included in the service list and did not file a response.

As the reopening of the case is simply a ministerial act without any independent legal significance, perhaps the best course of action is grant the motion as it seems that this court would be in the best position to grant or deny the declaratory relief sought. The issue of whether the BofA debt was discharged could very likely be resolved in a summary proceeding. The discharge order in this case (Dkt. 17) does note that most student loan debts *are not* included in a discharge, but it is unclear whether this particular debt would fit into some narrow exception, but this is not established by Debtor in this motion (and maybe it does not need to be at this point). The only proof of claim filed in this case was the debt in question. But the court would like an explanation of the lack of service.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be

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CONT... John M McWilliams

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arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

John M McWilliams

Represented By
Thomas J Polis

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**

Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#3.00 Application to Employ Shulman Bastian LLP as Special Counsel (Application to Expand the Scope of Employment) retroactive to May 10, 2017
(cont'd from 3-10-20)(rescheduled for 4-29-2020 at 11:00 a.m. per court)

Docket 2731

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWL OF APPLICATION OF CHSPTR 7 TRUSTE TO EXPAND
THE SCOPE FILED 4-16-20**

Tentative Ruling:

Tentative for 3/10/20:

This is the Trustee's Application to Expand the Scope of Employment of applicant's special litigation counsel, Shulman & Bastian, *retroactive to May 10, 2017*. The application is opposed by Scott Gladstone, one of the named defendants in the subject adversary proceeding. The court will start by saying this is bad practice, and a surprising and disappointing lapse from that which the court has come to expect given the long experience of both Trustee and the Shulman firm. The question presented is whether it is (or should be) fatal to the application. There is also an issue of conflict of interest.

As the court understands it, the following are the important background facts:

1. The Shulman firm was initially engaged by order entered October 27, 2016 on an hourly basis for the limited purpose of analyzing D&O coverage regarding Mr. Gladstone and potentially other officers and directors. The fees were capped at \$25,000 unless discovery were required, in which case the cap would move to \$50,000. The application made clear that if an adversary proceeding were to commence, a new and additional application would be required. The \$25,000 has already been paid to the Shulman firm on the initial

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CONT...

Anna's Linens, Inc.
engagement.

Chapter 7

2. This investigation was animated at least in part by the filing of adversary proceeding 8:15-ap-01293TA against the estate under the WARN Act. Apparently, the Shulman firm has since advised that if liability is fixed under the WARN Act this would justify moving forward under an adversary proceeding against officers and directors. The current status of the WARN Act proceeding is left unclear in the papers as is the conclusion of the Shulman firm on whether D&O coverage exists. The court does read that the Trustee has engaged new D&O coverage counsel [see motion p. 18, lines1-2]
3. Despite the promise referenced above in the previous employment application that if litigation were undertaken there would be a new application for employment of the Shulman firm specifying new terms, without such an application the Shulman firm filed an adversary proceeding for breach of fiduciary duty and negligence on June 14, 2017 17:ap-01105TA on behalf of the Trustee. Allegedly, this was filed to preserve a statute of limitations about to expire. Since this application for expanded employment is now filed over 30 months later, some analysis is required of the circumstances. While certainly not blowing a statute of limitations is an important consideration, the court is surprised to learn that the Shulman firm has already accrued \$30,000 in fees and costs for which it apparently also will seek allowance on a *nunc pro tunc* basis. To prepare and file a complaint?
4. Another issue arises over whether the Shuman firm has a disqualifying conflict under §327(c).
5. Apparently, the parties have been postponing activity on the subject adversary proceeding by continuing stipulation for these last 30 months. It looks like this was done so that other matters, such as resolution of certain Vendor claims and maybe the WARN Act lawsuit,

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could be first resolved, but that is left largely unclear in the papers.

A. Conflict of Interest?

Both sides appear to concede that if the Shulman firm has an actual conflict of interest, that is fatal to the employment. See 11 U.S.C. §327(c) Gladstone also argues for a more expansive interpretation of "adverse interest" within the meaning of §327(e) which has been defined to include "any interest or relationship, however slight, that would even faintly color the independence and impartial attitude required by the Code and Bankruptcy Rules." *In re Granite Partners, L.P.*, 219 B.R. 22, 33 (Bankr. S.D.N.Y. 1998). Gladstone argues that 11 U.S.C. §327(a) is intended to hold professionals performing duties for the estate to strict fiduciary standards and is concerned with a professional's divided loyalties and ensuring that professionals employed by the estate have no conflicts of interest with the estate. See *In re Envirodyne Indus., Ind.*, 150 B.R. 1008, 1016 (Bankr. N.D. Ill. 1993).

The Shulman firm has represented a list of persons, catalogued at ¶18 of Mr. Bastian's Declaration, reportedly in connection with evaluating those persons' rights as participants in the debtor's Deferred Compensation Plan. Mr. Bastian offers his view that it was a limited engagement and in no way could create a conflict in the adversary proceeding. He even proclaims that these creditors (and the Trustee) are prepared to waive any conflict (but nothing concrete is offered). He also argues that this engagement was disclosed in the initial employment application but, since no one objected at that time, it must be of little consequence. The court is not so sure. The big difference here is that litigation has now been initiated, and so now it is not about investigation of D&O coverage but about fixing liability for alleged breaches; Mr. Gladstone alleges that several of these persons were

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officers and managers of the debtor. So, even if the Trustee does not sue these creditors directly it is alleged that cross complaints against these persons by Mr. Gladstone for indemnity should be expected. This is a cause for concern. Can the Trustee and the court rest assured that the Shulman firm will vigorously prosecute if these former clients are now cross-defendants? Were confidences about these parties' role in management imparted to the Shulman firm?

B. Is *nunc pro tunc* employment appropriate?

Gladstone is correct that *nunc pro tunc* employment of professionals starts with analysis of an initial two prongs: (1) whether the applicant has satisfactorily explained its failure to apply for court approval on a timely basis and (2) whether the applicant's services have benefitted the estate. *In re Atkins*, 69 F. 3d 970,976 (9th Cir. 1995). Only if those two initial conditions are satisfied then the court may consider the additional factors in cases like *In re Twinton Properties Partnership*, 27 B.R. 817, 819-20 (Bankr. M.D. Tenn.1983) in its discretion. Value was conferred by the filing of the complaint, presumably, but we may have to revisit whether \$30,000 is a reasonable fee for filing a complaint. But the first factor, i.e. satisfactory explanation of the delay, is not so clear.

First, as the court has said above, this was an appallingly long delay and so the necessity to adequately explain is consequently higher. But the question is made closer by the Declaration of Nanette Sanders whose firm served as Trustee's general counsel. She cryptically references "acrimonious" discussions with other counsel (Brutkus Gubner?) who apparently also wanted a hand in prosecuting Mr. Gladstone. In the meantime, there was an attempt mentioned at ¶¶ 6-8 to negotiate a broader settlement to include Mr. Gladstone. Most importantly, at ¶ 6, lines 16-20, Ms. Sanders admits the Trustee

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specifically asked the applicant to "hold off on filing the application to expand the firm's employment so that issues with her other counsel could be resolved." This goes a long way to explaining the delay, but it is less clear that the explanation is "adequate." It would have been helpful if the court could understand the competing concerns motivating the Trustee to hold back on employment in an adversary proceeding where apparently applicant was already \$30,000 in, and then why other approaches such as employment but with a follow-on stipulation to moratorium, were not used. Was this just going soft on feelings of counsel or was something more fundamental at work? But to simply delay for 30 months really stretches adequacy of the explanation for *nunc pro tunc* treatment.

The court will hear argument on these points.

No tentative

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

**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
Todd C. Ringstad
Brett Ramsaur
Richard C Donahoo
Andrew Still

**United States Bankruptcy Court
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11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

**#4.00 Debtor's Objection To Claim Of Ford Motor Credit Company
(cont'd from 3-26-20)**

Docket 51

Tentative Ruling:

Tentative for 4/29/20:
Sustain.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:

Debtor is *pro se* and her claim objection is missing a few key documents, mainly a declaration and a proof of claim for the amended claim objection. Also, Debtor should be instructed to use the claim number as it appears in the claim register in her case, not the much longer number she provided.

Overrule the objection with leave to amend. Appearance is optional.

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CONT... Deborah Jean Hughes Chapter 7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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Wednesday, April 29, 2020

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11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

**#5.00 Debtor's Objection To Proof Of Claim of LVNV Funding, LLC, Resurgent Capital Services
(cont'd from 3-26-20)**

Docket 52

Tentative Ruling:

Tentative for 4/29/20:
Sustain.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:

Debtor's claim objection appears to have merit. The account is quite old at this point and collection would likely be barred by the 4 year statute of limitations imposed by section 337 of the California Code of Civil Procedure. However, as the opposition points out, the notice of the claim objection is likely deficient because Debtor input the incorrect claim number. Of greater consequence is that Debtor did not attach a sworn declaration to her claim objection, which is required under LRBP 3007-1(c)(1).

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CONT... Deborah Jean Hughes

Chapter 7

Debtor is be advised to amend her claim objection to include a sworn declaration and ensure that all interested parties are properly noticed and served.

Continue to June 25, 2020 at 11:00AM. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#6.00 Objection To Claim IRS In The Amount \$3,254.33

Docket 80

Tentative Ruling:

Tentative for 4/29/20:
Sustain.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
Central District of California
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Hearing Room 5B

11:00 AM

8:19-12516 Ultimate Brands Inc

Chapter 7

#7.00 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 2-11-20)(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 0

Tentative Ruling:

Tentative for 4/29/20:
Nothing has been filed since the last tentative was issued. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/11/20:
Status?

Tentative for 1/7/20:
Same.

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Wednesday, April 29, 2020

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11:00 AM

CONT... Ultimate Brands Inc

Chapter 7

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 paid." *Id.* at 3.

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

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Ultimate Brands Inc

Chapter 7

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 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

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CONT... Ultimate Brands Inc

Chapter 7

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;
- 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.

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CONT... Ultimate Brands Inc

Chapter 7

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.

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
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Hearing Room 5B

11:00 AM

8:20-10203 John S. Deyoe

Chapter 7

#8.00 Motion for Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(8)
(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 14

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF USTR MOTION FILED 4-20-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John S. Deyoe

Represented By
Christine A Kingston

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 29, 2020

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 of Orders for Appearance and Examination

Docket 177

Tentative Ruling:

Tentative for 4/29/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Pearl Li-Chu Huang

Represented By
Ken Liang - DISBARRED -
Bert Briones

Defendant(s):

Pearl Li-Chu Huang

Represented By
David Brian Lally

Roy Huei-Ming Huang

Represented By

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CONT... Pearl Li-Chu Huang

Chapter 7

David Brian Lally

Joint Debtor(s):

Roy Huei-Ming Huang

Represented By
Ken Liang - DISBARRED -

Plaintiff(s):

Kelly Iorio

Represented By
David M Reeder
Allan Herzlich

Trustee(s):

John M Wolfe (TR)

Represented By
Richard L Barnett

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, April 29, 2020

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 2-27-20) (rescheduled from 4-30-2020 at 11:00 a.m. per court)**

Docket 407

Tentative Ruling:

Tentative for 4/29/20:

This whole issue about contents of the PODS has seemed to the court to have run its course over the last seven months. There has not been the slightest indication that anything of value was either secreted or since uncovered. Absent a compelling reason presented by the Padilla side, the court is prepared to take this matter off calendar.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/27/20:
Status?

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CONT... Frank Jakubaitis

Chapter 7

Tentative for 12/12/19:
The court would appreciate a report as to what occurred pursuant to previous TPO.

Tentative for 11/21/19:
Same. What happened on the storage unit?

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
Arash Shirdel

**United States Bankruptcy Court
Central District of California
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Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

CONT... Frank Jakubaitis
Jeffery Golden

Represented By
Arash Shirdel

Chapter 7

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
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Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

8:20-10698 Jessie Ruth Craycroft

Chapter 7

#11.00 ORDER to show cause re dismissal for failure to comply with rule 1006(B) - installments (BNC) (\$100.00 due on 3-16-20) (OSC issued 3/17/20) -(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 11

Tentative Ruling:

Tentative for 4/29/20:
Dismiss unless the whole of the fee has been paid.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jessie Ruth Craycroft Pro Se

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
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Santa Ana
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Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

- #12.00** 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 at s/c held 8-15-19)
(cont'd from 2-6-20 per order granting ex parte application to continue defendants' mtn to dsm and the pre-trial conference entered 2-05-20)
(rescheduled from 4-30-2020 at 11:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/25/2020 AT 10:00 A.M.
PER ORDER APPROVING THE STIPULATION TO CONTINUE
PRETRIAL CONFERENCE ENTERED 4/16/2020**

Tentative Ruling:

Tentative for 2/27/20:

This is supposed to be a pre-trial conference. Sadly, it is not that and this is hardly the first time in this series of cases where the court has been sorely frustrated.

As required by the LBRs, the parties were to have met and conferred in good faith to narrow the issues so that trial time could be focused on those items truly in dispute. Local Rule 7016-1 sets forth a very specific timeline and list of duties incumbent on each side. At LBR 7016-1(b)(1)(C) Plaintiff was to have initiated a meet and confer *at least 28 days* before the date set for the pre-trial conference. According to Defendant's papers, this did not occur 28 days before the originally scheduled pretrial conference of Feb. 6, *or indeed at all* until February 13 when Plaintiff reportedly filed his "Pretrial Stipulation" in which he claims it was Defendants who "refused to participate in the pretrial stipulation process" necessitating what is actually a unilateral stipulation. Defendant on the next day, February 14, filed his Unilateral Pretrial Stipulation. Defendant does acknowledge at his page 2, line1-2 that

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Plaintiff sent something over to Defendant on January 28, but it was reportedly "not complete in any respect." As to the original date of the Pretrial Conference of February 6, that was very late. Whether that document was anything close to what was later filed unilaterally on Feb. 13 is not clarified. But what is very clear is that these two unilateral "stipulations" are largely worthless in the main goal of narrowing issues inasmuch as the parties seem to be discussing two entirely different complaints. Defendant focuses on what the former trustee (now deceased) may have known about the existence of a loan undisclosed on the schedules made by Frank to WeCosign, Inc., which loan was reportedly worthless in any case, and about how that knowledge should be imputed to Plaintiff Marshack. But why the trustee's knowledge, imputed or otherwise, should justify an alleged misstatement or omission to list assets under oath, is never quite explained. One presumes Defendant will argue materiality. Plaintiff focuses on the alleged use of another corporation, Tara Pacific, as the repository of funds taken from WeCosign as an alleged fraudulent conveyance and then used by Frank and Tara as a piggy bank between 2010 and 2012 and upon alleged misstatements in the schedules about Tara's and Frank's actual average income. While this sounds like a fraudulent conveyance theory the gist seems to be that Tara and Frank were using ill-gotten gains to live on while denying in respective schedules that they had any income (or assets) thus comprising a false oath. There probably are connections between these different stories, but that is not made at all clear (and it must be made clear). Plaintiff's overlong "stipulation" is written more like a 'cut and paste' brief containing long tables with over 59 footnotes inserted. One presumes this represents a good faith compilation of bank records, but even that is left unclear. But the language used reads purely as advocacy, not an attempt to narrow the disputed facts in a way the other side can sign.

Buried in the Defendant's recitations (at page 4, ¶ 13) is the argument that the case should be dismissed as outside the statute of limitation (or statute of repose in Defendant's terms) described at §727(e)(1). Why this was not raised 50+ months ago when the action was filed by Rule 12(b)

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motion or otherwise is not explained. What the Defendant expects the court to do with this point now is also not explained.

In sum, this case is still a disorganized mess. This is not the first time the court has voiced its utter frustration with this series of cases. Rather than being ready for trial, we are very much still at the drawing board. The court is not happy about it as this is hardly a young case.

What is the remedy? The court could order sanctions against either side, or maybe both sides, and that would be richly deserved. The court could decide that Plaintiff as the party with the initial duty under the LBRs should suffer the brunt of just consequences by a dismissal, as the ultimate sanction. But however tedious and frustrating this has become the court would rather see these cases decided on their merits (if any) *if that is possible*. But what the court will not do is to further indulge these parties in disobeying the LBRs and generally continuing to shamle along, never getting anywhere. Therefore, **it is ordered:**

1. The parties will immediately meet and confer about reducing the two unilateral 'stipulations' into an intelligible, single, useful list of items not in dispute and therefore requiring no further litigation;
2. The resulting stipulation will be concise, user-friendly and focused on the actual legal issues to be tried;
3. The stipulation will contain a concise list of exhibits to be offered at trial identified by number for Plaintiff and letter for Defendant;
4. The parties will attempt in good faith to resolve any evidentiary objections to admission of the exhibits, and if agreement cannot be reached, state concisely the reasons for or against admissibility;
5. The stipulation will contain a list of witnesses to be called by

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each side, with a very brief synopsis of the expected testimony;

6. All factual matters relevant and truly in dispute will be listed, by short paragraph;
7. All legal issues to be decided will be separately listed, by paragraph;
8. Any threshold issues such as Defendants argument about statute of repose will be separately listed along with a suggested means of resolving the issue; and
9. Both sides will estimate expected length of trial, mindful that the court requires all direct testimony by declaration with the witnesses available at trial for live cross and re-direct.

In sum the parties are to do their jobs. If the court's order is not followed *in enthusiastic good faith, and completely* with the goal of narrowing the issues, and if the resulting product is not a concise, user-friendly joint pretrial stipulation, the offending party or parties will be subject to severe sanctions which may include monetary awards and/or the striking or either the complaint or answer.

Continue about 60 days to accomplish the above.

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.

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CONT... Tara Jakubaitis
Tentative for 10/25/18:
See #12.

Chapter 7

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
discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can
be set.

Tentative for 5/4/17:
Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines
make sense at this juncture given the ongoing disputes over even
commencing discovery?

Tentative for 3/23/17:
See #13.1

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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

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

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U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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11:00 AM

8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

#13.00 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 3-26-20)
(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 1

Tentative Ruling:

Tentative for 4/29/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:
See # 12-14.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866)

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CONT... Richard Paul Herman
582-6878.

Chapter 7

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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 Jeanne M Jorgensen
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Trustee(s):

Karen S Naylor (TR)	Represented By
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Richard Paul Herman

Nanette D Sanders

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11:00 AM

8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

- #14.00** Hearing on Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay **(set by Order entered 3-18-20)**
(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 113

Tentative Ruling:

Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

- (a) Why he should not be held in contempt for
- i. his continuing efforts to exercise control over and interfere with the dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and
 - ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.
- (b) Why he should not be subjected to the following sanctions:
- i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and
 - ii. Compensatory damages incurred by Foothill and the Trustee as a

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CONT...

Richard Paul Herman

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result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely responses.

Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate

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refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the Trustee has sought damages under 11 U.S.C. § 362(k), but rather this proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted). Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

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1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2) affirming to the State Court that the only cause of action that the Hermans assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "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) Debtor's "claim 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."

2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the

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continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

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

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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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8:17-14117 Richard Paul Herman

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Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#15.00 Evaluation Hearing RE: Plaintiff's Motion for Preliminary Injunction
(con't from 3-26-20)
(rescheduled from 4-28-2020 at 11:00 a.m. per court)**

Docket 5

Tentative Ruling:

Tentative for 4/29/20:
See #14.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:
What is the status of this portion of the case?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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 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

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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 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).

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CONT...

Richard Paul Herman

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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 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

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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 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

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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 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.

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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 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.

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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

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

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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

- #16.00** STATUS CONFERENCE RE: Amended Adversary Complaint of Nondischargeability and Exception from Discharge of Debts for Case KC069896 Samec vs. Griffithe et.al.
**(cont'd from 3-12-20)(Amended Complaint filed 3-3-2020)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)**

Docket 47

Tentative Ruling:

Tentative for 4/29/20:
See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:
See #7.

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Tentative for 1/16/20:
Same as #1. Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

**#17.00 Plaintiff's Motion For Temporary Abstention
(cont'd from 3-12-20)(rescheduled from 4-30-2020 at 10:00 a.m. per court)**

Docket 38

Tentative Ruling:

Tentative for 4/29/20:
Continue to June 25 to coincide with dismissal motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:

This motion is largely indistinguishable from *Bagot v. Griffithe*; 8:19-ap-01201. The adopted tentative ruling from that case, incorporated below, also finds application here, and the motion should be granted. See below.

"Tentative for 3/5/20:

This is the Plaintiff's motion for "Temporary Abstention" and for stay of

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the pending litigation in favor of a proceeding in Washington State Court. Oddly, the motion is not brought for permissive abstention under 28 U.S.C. § 1334(c) but rather under the court's "inherent power to regulate their dockets and should use it to stay litigation pending resolution of another case or arbitration proceeding where it will dispose of or narrow the issues to be resolved in that litigation." *In re Barney's Inc.*, 206 B.R. 336, 343-44 (Bankr. S.D.N.Y. 1997). As near as the court can determine, the standards are largely the same.

It is well established that a federal court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-707, 117 S. Ct. 1636 (1997); see also *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."); *O'Dean v. Tropicana Cruises International, Inc.*, 1999 WL 335381, *4 (S.D.N.Y. 1999) (federal court suspended action pending disposition of arbitration proceeding); *Evergreen Marine Corp. v. Welgrow International, Inc.*, 954 F.Supp. 101, 103-105 (S.D.N.Y.1997) (authorized stay in federal proceedings pending disposition of related foreign action).

The Ninth Circuit has enumerated factors a bankruptcy court should weigh when it considers whether to permissively abstain from hearing a matter before it. See *Christiansen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990). Those factors include: (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 non-bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,(6) the degree of relatedness or remoteness of the proceeding

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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 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 non-debtor parties.

Plaintiff cites a less exhaustive five factor analysis for suspending or staying a nondischargeability action as follows: (1) The burden of the proceeding on the defendant; (2)The interest of the plaintiff in expeditiously pursuing the action and prejudice resulting from any delay;(3) The convenience of the court in the management of its cases and the efficient use of judicial resources; (4) The interests of non-parties to the litigation; and (5) The interest of the public in the pending civil and criminal litigation. *In re Government Securities Corp.*, 81 B.R. 692, 694 (Bankr. S.D. Fla. 1987). See also, *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 809 (N.D. Cal. 1989).

Although the parties do not agree on which set of factors is correct, the parties do agree that not all of the above factors are applicable nor are they of equal weight. Plaintiff's most persuasive argument for abstention from this court, and one that Defendant does not dispute, is that Plaintiff and Defendant are already heavily engaged in an action in Washington state court. According to Plaintiff, the allegations in the state court action mirror those of the allegations made in this adversary proceeding. Defendant argues that this is a false assertion as there is no mention of anything in the Washington state court action that mirror Plaintiff's §727 claims, although Defendant does concede that Plaintiff's §523 claims are mirrored by the allegations in the Washington state court action. The Washington state court action was filed over a year ago and is reportedly set for trial in April of 2020. Consequently, it seems feasible for the Washington matter to proceed to trial and judgment on

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the issues underlying the §523(a) claims (and certain of the §727 theories involving pre-petition behavior). Provided that Plaintiff is careful in obtaining detailed and clear findings, Plaintiff can then resolve this adversary proceeding under collateral estoppel theories by Rule 56 motion. To the extent that Defendant is correct in his assertion that Plaintiff's §727 claims are not mirrored in the state court action, Plaintiff asserts that he will simply drop those claims as they will likely be unnecessary after the state court rules on the underlying claims. Plaintiff has already obtained relief from stay. Considering the resources that the parties have already expended in Washington, including pre-trial motions, discovery, etc., the parties should likely finish what they started up there. This approach would conserve resources here and would not likely result in duplication of effort.

Concerning the administrative law claims and SEC claims pending in Washington State against Defendant, Plaintiff argues that resolution of these claims will help narrow the issues even further or could even provide additional probative details, which Plaintiff argues is a proper justification for abstention. Defendant argues that these other cases should not be considered for purposes of abstention because they do not directly involve Plaintiff, but this argument is less compelling because Defendant does not attempt to argue that such litigation would not serve to narrow the issues or provide useful additional background. Defendants other arguments against abstention, including the recent withdrawal of Defendant's counsel and a vague argument regarding the purported untimeliness of this motion, do not really move the needle in Defendant's favor. Related to the purported untimeliness of this motion is Defendant's argument that this motion is premature because if Defendant's dismissal motion is granted, then this motion becomes essentially moot. Plaintiff notes that Defendant cites no authority for the proposition that dismissal of the complaint would also end the Washington state court action. Defendant's argument also ignores that complaints after Rule 12 motions can be (and very likely would be) amended if they are found to be defective.

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Guy S. Griffithe

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In sum, Plaintiff has made a persuasive case for staying proceedings in this court and allowing the parties to litigate what are largely matters of state law in Washington state court, especially since the parties are on the doorstep of trial. Thus, as Plaintiff urges, the court should use its power under §105(a) to temporarily abstain or stay this adversary proceeding pending resolution in Washington state court. Plaintiff is cautioned to obtain clear and dispositive findings on the operative issues such that collateral estoppel can govern in subsequent Rule 56 motion.

Grant abstention. This adversary proceeding is stayed until Plaintiff seeks to return for a Rule 56 motion. The court will schedule a status conference approximately 180 days out for evaluation."

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe Et.Al

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01200 Samec et al v. Griffithe

#18.00 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.
(cont'd from 3-12-20)(rescheduled from 4-28-2020 at 10:00 per court)

Docket 1

Tentative Ruling:

Tentative for 4/29/20:
See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:
See #9 and 10.

Tentative for 1/16/20:
See #4. The status conference will travel with any motion to dismiss.

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Appearance not required.

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Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01200 Samec et al v. Griffithe

**#19.00 Plaintiff's Motion For Temporary Abstention
(cont'd from 3-12-20)(rescheduled from 4-28-2020 at 10:00 per court)**

Docket 35

Tentative Ruling:

Tentative for 4/29/20:
See #17.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:
See #7. Same as there, and same as in *Bagot v. Griffithe*.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

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Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Brenda Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01200 Samec et al v. Griffithe

#20.00 Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]
(cont'd from 3-12-20)(rescheduled from 4-28-2020 at 10:00 per court)

Docket 8

Tentative Ruling:

Tentative for 4/29/20:
See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:

This seems largely paralleled to *Bagot v. Griffithe*; 8:19-ap-1201. The adopted tentative ruling in that case is incorporated below. For the same reasons, the motion should be denied. See below.

"Tentative for 3/5/20:

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This is the continued hearing on the Defendant's Rule 12(b) Motion to Dismiss. This analysis is divided into two sections. The first section deals with the subject matter jurisdiction issue. The second deals with whether claims for relief have been plausibly stated, sufficient to survive the motion.

I. Subject Matter Jurisdiction

At the hearing on January 16, 2020, because there was only sparse authority on the subject, the court requested supplemental briefing regarding whether this court had subject matter jurisdiction over this adversary proceeding in view of the parties' various connections to the cannabis industry (in violation of the Controlled Substances Act of 1970 ("CSA")). In its tentative ruling, the court summarized and excerpted portions of relevant case law and provided its own initial ideas on this narrow issue. That tentative ruling is incorporated herein by reference. Both sides have filed supplemental briefs on the narrow issue identified by the court.

Unfortunately, the supplemental briefing has not provided a definitive answer. Instead, Defendant has, again, cited the case of *Northbay Wellness Group, Inc. v. Beyries*, 2011 WL 5975445 (Bankr.N.D.Cal. 2011), where the bankruptcy court dismissed the debtor's case based on the equitable doctrine of *in pari delicto*. However, as this court noted in its earlier tentative ruling, the Ninth Circuit expressly overruled the bankruptcy court's application of the unclean hands doctrine on grounds that the bankruptcy court failed to properly balance the parties' respective wrongdoings.

In the interim, the court's own research has located case law within the Ninth Circuit that may be useful. In *Mann v. Gullickson*, 2016 WL 6473215 (N.D. Cal. Nov. 2, 2016), the court had to decide whether a contract related to the medical marijuana industry in California was enforceable. The court undertook a comprehensive analysis of the enforceability of contracts containing illegal subject matter. The court noted the specific prohibitions

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placed on marijuana by the CSA, but also noted that enforcement of contracts containing illegal subject matter resists hard and fast rules. Indeed, the *Mann* court observed that "[s]ometimes the forfeiture resulting from unenforceability is disproportionately harsh considering the nature of the illegality." *Id.* at *6. The court, citing the Ninth Circuit Case of *Bassidji v. Goe*, 413 F.3d 928 (9th Cir. 2005), devised a test of sorts for determining when contracts regarding illegal subject matter may nevertheless be enforceable:

"The Ninth Circuit analyzed federal case law and California precedents... to investigate '[n]uanced approaches to the illegal contract defense, taking into account such considerations as the avoidance of windfalls or forfeitures, deterrence of illegal conduct, and relative moral culpability,' and those considerations 'remain viable in federal court and represent no departure from [federal precedent] . . . [so] long as the relief ordered does not mandate illegal conduct.' *Id.* at 937-38." *Mann*, 2016 WL 6473215 at *7.

The *Mann* court also noted that "[t]he federal government's concern over the CSA's medical marijuana prohibition has waned in recent years, and the underlying policy purporting to support this prohibition has been undermined." *Id.* at *9. Noting that several states have legalized marijuana in one form or another, the *Mann* court held:

Given the federal government's wavering policy on medical marijuana in states that regulate this substance, and California's expressed policy interest in allowing qualified patients to obtain medical marijuana, the purported illegality here is not one the Court finds to mandate non-enforcement of the parties' contract. *Id.*

Here, the plaintiff is alleging breach of contract (among other related causes of action) against Defendant in connection with a marijuana concern. The court has already opined on the gross unfairness that would result if Defendant were allowed to use the bankruptcy system as a shield from his alleged misdeeds. The court also notes that, in the event Plaintiff prevails

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against Defendant in this adversary proceeding, this court would not be forcing either party to engage in illegal conduct. This was a major point raised in *Mann*, i.e. the issuance of a remedy would not necessarily entail a resort to unlawful conduct. Not only does this approach properly involve the balancing of relative wrongdoings as required by the Circuit in *Northbay*, it also harmonizes with the various cases where federal courts refused to become involved at all such as *In re Arenas*, 514 B.R. 887 (Bankr. D. Colo. 2012), because to do so would necessarily require someone to accommodate ongoing breach of the CSA, such as by selling contraband as assets of the estate.

Defendant argues that accepting jurisdiction would require the court to intervene proactively and thus improperly in what otherwise would have been Defendant's *carte blanche* ride to discharge. Implicit in this is the argument that the court should leave the wrongdoers where it finds them and only unusual action by the court offensive to the CSA would interrupt Defendant's ride to discharge. But this argument is unpersuasive because it could as easily be looked at another way, i.e. the court would be issuing a change in the status quo by granting the discharge, which is not a right but a privilege, and this action is to determine whether, balancing acts on both sides, that can or should be done consistent with justice. The court is thus persuaded that it *does* have subject matter jurisdiction, or at least that there is no compelling reason on these facts to decide otherwise.

II. Are Claims for Relief Adequately Stated?

Plaintiff's complaint alleges claims for relief under 11 U.S.C. §727(a) (2), (3), (4), (5), (6), (7) and (12), as well as under 11 U.S.C. §523(a)(2), (4), and (6) (10 causes of action in total). By this motion, Defendant seeks dismissal of all causes of action.

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A. 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 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.*

B. Alleged Factual Background

Defendant-Debtor Guy S. Griffithe is an individual who, at all times pertinent hereto, owed a fiduciary duty to Plaintiff Steven Bagot, among others, who "invested" in his companies. Defendant-Debtor allegedly made fraudulent verbal and written statements to solicit "investments" into SMRB,

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LLC, a Washington State licensed marijuana producer/processor business, and was a signatory to allegedly fraudulent documents underlying the non-bankruptcy litigation in Skagit County Superior Court Case No. 18-2-00544-29 and King County Superior Court Case No. 19-2-00772-9 SEA. Plaintiff provided no less than \$650,000.00 to the Defendant through his alter-ego entity (Renewable Technologies Solutions, Inc. ("RTSI")) for the benefit of SMRB, LLC. When Plaintiff sued to recover his "investment" and damages for Defendant-Debtor's alleged wrongful conduct, the Defendant-Debtor filed the relevant bankruptcy action as well as this motion to dismiss.

On January 9, 2019, Mr. Bagot filed a complaint with the King County Superior Court Case No. 19-2-00772-9 SEA alleging causes of action against Defendant-Debtor for fraud, negligent misrepresentation, civil conspiracy, breach of contract, unjust enrichment, conversion, promissory estoppel, breach of the fiduciary duties, breach of the duties of good faith and fair dealing, violations of Washington's LLC disclosure requirements and violations of securities laws. The trial is set for April 6, 2020. The complaint is accompanied by Ex. "A", a report by the Washington State Liquor and Cannabis Board ("WSLCB report"), which provides details of Defendant's alleged misconduct and is heavily referenced in both the complaint and the opposition to this motion. Below the court analyzes how each of the alleged claims for relief fit with this background.

B. §727(a)(2)(A)

This statute provides: "The court shall grant the debtor a discharge, unless— 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— property of the debtor, within one year before the date of the filing of the petition[.]" Plaintiff has sufficiently pled this cause of action in the complaint. Specifically, Plaintiff alleges, with the aid of Exhibit A, that Defendant intentionally transferred

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valuable property belonging to him which reduced the assets available to the creditors and which was made with fraudulent intent. Plaintiff alleges that Defendant has transferred (to his alter ego entities, Robert Russell, entities owned by Russell, and other entities not known to Plaintiff), removed, destroyed, mutilated, or concealed his property, including the funds provided to him by Mr. Bagot, the oil processing machine, \$1,000,000 million in product from Emerald City Cultivation, and other assets Defendant claims to have utilized (a portion of) these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge. Plaintiff also asserts that this conduct occurred within 1-year of the petition date (June 26, 2019) as Plaintiff initiated legal proceedings against Defendant in late spring of 2018.

C. §727(a)(3)

This statute provides: "The court shall grant the debtor a discharge, unless— 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" It is apparent that Plaintiff has adequately made this allegation in the complaint. Specifically, Plaintiff alleges in several places in the complaint the absence of adequate record keeping by Defendant as noted throughout, specifically in regard to Plaintiff's initial investment of \$450,000. Plaintiff also alleges the absence of adequate records related to the purchase of the oil-processing machine and the products purchased from Emerald City Cultivation among other assets. Plaintiff also asserts that he has been attempting to obtain such

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documentation through discovery without success. Thus, it appears that Plaintiff has adequately alleged that Defendant failed to keep relevant records, and there does not appear to be justification for this failure, taking Plaintiff's allegations as true.

D. §727(a)(4)

This statute provides: "The court shall grant the debtor a discharge, unless— the debtor knowingly and fraudulently, in or in connection with the case—

- (A) made a false oath or account;
- (B) presented or used a false claim;
- (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
- (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[.]"

This statute requires that Plaintiff allege: (1) [the debtor] made a statement under oath; (2) the statement was false; (3) [the debtor] knew the statement was false; (4) [the debtor] made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *Matter of Beaubouef*, 966 F.2d 174, 178 (5th Cir 1992). False oaths sufficient to justify the denial of discharge include: (1) a false statement or omission in the debtor's schedules or (2) a false statement by the debtor at the examination during the course of the proceedings. *Id.* at 178; *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir.1999). Plaintiff's complaint, including the exhibits, does allege

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that Defendant made several intentional false statements relating to the bankruptcy case. For example, Plaintiff alleges that Defendant has failed to report or disclose several assets, including the hundreds of thousands of dollars he took from Plaintiff and never provided to SMRB, LLC. Plaintiff argues, citing *In re Hoblitzell*, 223 B.R. 211, 215-16 (Bankr.E.D. Cal. 1998), for the proposition that a false statement or omission is material even if it does not cause direct financial prejudice to creditors. Therefore, although not presented as clearly as it could be, it appears that Plaintiff has sufficiently alleged that Defendant made false statements under oath by failing to disclose several assets known to Defendant in his bankruptcy schedules with an intent to deceive creditors and officers of the court. These specific allegations are likely enough to satisfy the heightened pleading requirements for purposes of Rule 9(b).

E. §727(a)(5)

This section provides: "The court shall grant the debtor a discharge, unless— the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities[.]" Here, Plaintiff's complaint, including the additional detail in the Exhibit, has sufficiently alleged the disappearance of identifiable assets no longer available to creditors, including the funds provided to him by Plaintiff, the (funds available for) purchase and transfer of the oil processing machine, the \$1,000,000 million (per month) in product purchased from Emerald City Cultivation, and other assets Defendant claims to have utilized a portion of these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge.

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Defendant does not attempt to explain the loss of these assets, but only points out that the WSLCB report makes no such findings as detailed above. The court notes that the report is lengthy, and the complaint does not make reference to any specific page or paragraph numbers where such information can be easily found. However, in sum, Plaintiff's complaint, which incorporates the WSLCB by reference, does appear to sufficiently allege a cause of action under §727(a)(5), but Plaintiff's complaint could benefit from specific pin cites.

F. §727(a)(6)

The statute provides: "The court shall grant the debtor a discharge, unless—the debtor has refused, in the case—

- (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;
- (B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or
- (C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify[.]"

Plaintiff argues that it is undisputed that as stated in the Complaint, in the King County Superior Court litigation, the Honorable Judge McHale entered an Order ordering Defendant-Debtor provide complete responses and documents in response to Mr. Bagot's discovery requests, which were due no later than June 25, 2019, Defendant allegedly failed to comply with this Order. Plaintiff also argues that Defendant did not object on grounds of privilege against self-incrimination or any other ground, Defendant simply refused to

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comply. Plaintiff asserts that this failure to cooperate resulted in sanctions being imposed, which Defendant apparently has also refused to pay. There is a question whether "the court" as referenced in the statute means the bankruptcy court only, or might it mean another court such as the Kings County Court. But this point is not developed in the papers. Thus, Plaintiff has likely pled sufficient facts to survive the motion to dismiss.

G. §727(a)(7)

This statute provides: "The court shall grant the debtor a discharge, unless—the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider[.]"

As discussed above, Plaintiff alleges that Defendant committed the acts in (2), (3), and (6) within 1 year of the petition date. Also as discussed above, Plaintiff's complaint alleges various acts of misconduct during the pendency of the bankruptcy case, including knowingly providing false information in his bankruptcy schedules. Again, the question arises whether the malfeasance in another case must be one under Title 11. But the point is not developed so the pleading seems sufficient.

H. §727(a)(12)

This section states: "The court shall grant the debtor a discharge, unless— the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

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(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)."

As Plaintiff argues, the complaint details the fraudulent sale of unregistered securities by Defendant, an unregistered security broker/dealer, in Defendant's alter ego entities including Renewable Technologies Solutions, Inc. and SMRB, LLC (d.b.a. Green Acres Pharms) (and possibly Green Acres Pharms, LLC, from whom the "Distribution" was paid), as well as his improper conduct while acting in a fiduciary capacity with respect to these dealings and entities. Therefore, Plaintiff has sufficiently pled the first element of this claim. With respect to the second element, there must be pending a proceeding in which the debtor may be found guilty of a felony or liable for a debt of the kind described in §522(q)(1); Plaintiff's complaint provides sufficient details his pending proceeding against Defendant for, among other things, violating State securities laws and relevant disclosure requirements. Thus, this cause of action is likely sufficient to survive the motion.

I. §523(a)(2)(A)

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any 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[.]" The debtor's intent to deceive may be inferred by circumstantial evidence under the 'totality of the circumstances' test. *In re Eashai*, 87 F.3d 1082, 1087 (9th. Cir. 1996). Under the relevant test, the Court "may infer the existence of the debtor's intent not to pay if the facts and circumstances of a particular case present a picture of

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deceptive conduct by the debtor." *Id.*

As discussed above, the complaint provides ample detail of Defendant's alleged fraudulent misconduct including, allegedly making false statements about his companies' financial situations, matters of ownership, etc. in connection with soliciting investment from Plaintiff. Plaintiff points out that the WSLCB report made several of these findings, all of which are incorporated into the complaint as an exhibit. In sum, there appears to be sufficiently detailed allegations, taken as true, to satisfy the pleading requirements, including those of Rule 9b.

J. §523(a)(4)

This section provides: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) 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[.]"

For purposes of § 523(a)(4), embezzlement is defined as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269, 16 S. Ct. 294, 295, (1885). Further, as explained in *Murray v. Woodman (In re Woodman)*, 451 B.R. 31 (Bankr. D.Idaho), "an intent to deprive the rightful owner of funds only temporarily and not permanently [does] not negate the element of [fraudulent] intent." *Id.* at 43. "To prevail under § 523(a)(4) for larceny, a creditor must prove that "the debtor has wrongfully and with fraudulent intent taken property from its owner. Larceny differs from embezzlement in the fact that the original taking of property was unlawful, and without the consent of the injured person." *King v. Lough (In re Lough)*, 422 B.R. 727, 735-36 (Bankr. D. Id. 2010). (internal citations omitted)

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The complaint appears to allege both embezzlement and larceny while Defendant was acting in a fiduciary capacity. Taking Plaintiff's allegations as true, Defendant obtained money from Plaintiff which he was required to – on two different occasions – provide directly to SMRB, LLC (d.b.a. Green Acres Pharms). Plaintiff alleges that Defendant not only obtained these funds unlawfully from Plaintiff, Defendant either never provided Plaintiff's funds to SMRB or improperly removed them and has failed to provide any accounting for these funds or explain their disappearance, without the consent of Plaintiff. Again, taking Plaintiff's allegations as true, Plaintiff does appear to have pled sufficient facts to survive the motion.

K. §523(a)(6)

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title 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[.]" Section 523(a)(6)'s willful injury requirement is met when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002). Plaintiff's complaint is replete with allegations of knowing misconduct, including fraud, breach of contract, breach of fiduciary duty, unjust enrichment, etc. Specifically, Plaintiff alleges that false statements in certain written materials induced Plaintiff to invest Defendant's ventures. Taken as true, the allegations in the complaint are sufficient to satisfy the willfulness portion of the statute.

Courts treat the malicious injury requirement of § 523(a)(6) as separate from the willful requirement. According to *In re Jercich* 238 F.3d 1202, 1209 (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.'" ; *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir.

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2002). Plaintiff alleges conduct that, if true, would satisfy the maliciousness portion of the statute. For example, Plaintiff's complaint alleges that Defendant knowingly made material misstatements or omissions the written material provided to Plaintiff, which ultimately allowed Defendant to obtain the hundreds of thousands of dollars from Plaintiff. Plaintiff alleges that Defendant knew that the money acquired from Plaintiff had not gone for the benefit of SMRB or to purchase an oil processing machine, and also knew that significant damage to plaintiff would certainly result if the money could not be returned to Plaintiff. The WSLCB report also concludes on page 9 that it appears that the investors taken in by Defendant (Plaintiff among them) were the victims of a fraudulent "Ponzi Scheme." For these reasons, Plaintiff's complaint has sufficiently stated claim under section 523(a)(6).

L. Attorney's Fees Under §523(d)

This section states: "If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust." As should be obvious, none of Defendant's debts have been discharged in connection with the section 523(a)(2) claim as we are still at the pleading stages. Thus, this request for attorney's fees by Defendant is premature and is thus denied.

III. Conclusion

The court does not see a failure of subject matter jurisdiction. The court is persuaded Plaintiff's complaint, though it could be made clearer in places by pin citation to the attached WSLCB report and in a few places raise

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some dubious theories, does appear to have stated enough for relief under every theory alleged. This is not to say that Plaintiff will succeed on every theory alleged, but simply that the basic pleading requirements have been satisfied.

Deny"

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and

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illegal under federal law.

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Even though cannabis sale has now been legal in several states for several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.' *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to

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discharge action. Neither the cases cited in the briefs nor any that the court has been able to find analyze and/or expressly settle the jurisdiction issue. The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case should not

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cause mandatory dismissal." *Id.* at *7.

The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections and benefits of the Bankruptcy Code.

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Perhaps the better questions are, should only part of the court's jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Brenda Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-14912 Igor Shabanets

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Adv#: 8:20-01029 Marshack v. IOS PROPERTIES, LLC

**#21.00 STATUS CONFERENCE RE: Notice of Removal of State Court Action to Federal Bankruptcy Court [Los Angeles County Superior Court Case No. 19STCV17379]
(rescheduled from 4-30-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 4/29/20:

The Trustee makes a persuasive case that abstention is not appropriate and there are continuing strategic issues over wording of the judgment. As a practical matter, the Trustee is (and has been as of the petition date) the real party in interest with standing to amend, etc. the judgment. Rooker -Feldman is not implicated as it does not appear that the bankruptcy court will be asked to overrule that which the state court has already determined, but rather, to manage the remedies. Deny abstention or remand.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Igor Shabanets

Represented By

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

Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

CONT... Igor Shabanets

Bruce A Boice

Chapter 7

Defendant(s):

IOS PROPERTIES, LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Tinho Mang
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**

Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01029 Marshack v. IOS PROPERTIES, LLC

#22.00 Motion to Reconsider and Vacate Judgment Entered in Removed Action

Docket 10

Tentative Ruling:

Tentative for 4/29/20:

See #21. The motion will be granted. The Trustee has identified what may be a conflict between Remares and the estate. What is missing in the respondent's argument is the acknowledgement that as of the moment of the petition the Trustee became the real party in interest of the right of action. The relief of stay in no way changed that conclusion (indeed it was reinforced rather specifically). So, it was no longer the creditor's call to make over the wording of the judgment. The Trustee already has the standing now, as he had then, without need of order, to seek an amendment of the judgment's wording. Since the case was removed, it is this court (one supposes) where such a motion can be heard. In issuing the relief of stay the court expected that counsel would closely coordinate with the Trustee. Indeed, the court recalls being rather clear on the point. By entering the judgment with this particular wording, without consulting with the Trustee, issues about attachment and seasoning of the creditor's prior lien have arisen. 11 U.S.C. Â§551 is sufficiently arcane such that the Superior Court should not be expected to maneuver through the intricacies, or to understand that counsel for Remares has no standing to address the issue as the aggrieved party is the estate.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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

Wednesday, April 29, 2020

Hearing Room

5B

11:00 AM

CONT... Igor Shabanets

Chapter 7

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

IOS PROPERTIES, LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Tinho Mang
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**

Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

**#23.00 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 3-11-20)**

Docket 118

Tentative Ruling:

Tentative for 4/29/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/11/20:
An updated status report would have been useful. When can final decree be anticipated?

Tentative for 3/4/20:
Continue to March 11, 2020 at 10:00AM.

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

Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

CONT... Cypress Urgent Care, Inc.

Chapter 11

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

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

Wednesday, April 29, 2020

Hearing Room

5B

11:00 AM

8:19-11525 Christopher John Windisch and Mimoza Windisch

Chapter 11

#24.00 Final Fee Application For Allowance Of Professional Fee For The
Period: 9/1/2019 to 12/19/2019:

MICHAEL JONES, DEBTOR'S ATTORNEY:

FEE: \$7645.00

EXPENSE: \$650.40.

Docket 83

Tentative Ruling:

Tentative for 4/29/20:

Grant, assuming a consent document from the debtor can be obtained as required in the LBRs. Applicant may submit this with the form of order. If consent is not readily available, applicant may file a follow-on motion explaining.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

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

Wednesday, April 29, 2020

Hearing Room 5B

11:00 AM

CONT... Christopher John Windisch and Mimoza Windisch

Chapter 11

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, May 6, 2020

Hearing Room 5B

10:00 AM

8:20-11069 Keith Alan Miles and Jennifer Ann Miles

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CAB WEST, LLC
Vs
DEBTORS

Docket 14

Tentative Ruling:

Tentative for 5/6/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Keith Alan Miles

Represented By
Christopher J Langley

Joint Debtor(s):

Jennifer Ann Miles

Represented By
Christopher J Langley

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

CONT... Keith Alan Miles and Jennifer Ann Miles

Chapter 13

Movant(s):

Cab West, LLC

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**

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 4-08-20)**

U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS

Docket 47

Tentative Ruling:

Tentative for 5/6/20:
Same, grant unless APO stipulated. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:
Grant unless and APO is stipulated. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be

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

Wednesday, May 6, 2020

Hearing Room

5B

10:00 AM

CONT... Walter Quiroz and Carmen Quiroz

Chapter 13

arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/25/20:
Grant unless current or APO.

Party Information

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Movant(s):

U.S. Bank National Association

Represented By
Sean C Ferry
Eric P Enciso

Trustee(s):

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 6, 2020

Hearing Room 5B

10:00 AM

8:17-13437 Michael Edward Partain

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-31-2020 per court)
(cont'd from 4-01-20)

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING
Vs.
DEBTOR

Docket 49

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION FOR RELIEF FROM THE AUTOMATIC
STAY UNDER 11 USC SECTION 362 FILED 4-29-20**

Tentative Ruling:

Tentative for 4/1/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Michael Edward Partain

Represented By
Alon Darvish

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

CONT... Michael Edward Partain

Chapter 13

Movant(s):

NewRez LLC d/b/a Shellpoint

Represented By
James F Lewin

Trustee(s):

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 6, 2020

Hearing Room 5B

10:00 AM

8:18-10170 John Benjamin Riddle

Chapter 7

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-31-2020 per court)
(cont'd from 4-01-20)

WILIMINGTON SAVINGS FUND SOCIETY, FSB,
Vs.
DEBTOR

Docket 148

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER ENTERED 5-04-20**

Tentative Ruling:

Tentative for 4/1/20:

Continue for notice to junior lienholders. Regarding opposition, the court would be more impressed if the Trustee, the primary party in interest were to oppose.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

John Benjamin Riddle

Represented By
Andy C Warshaw

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

CONT... John Benjamin Riddle

Chapter 7

Movant(s):

Wilmington Savings Fund Society,

Represented By
Lemuel Bryant Jaquez

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Wesley H Avery
Wesley H Avery

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-31-2020)**

WELLS FARGO BANK
Vs.
DEBTOR

Docket 38

Tentative Ruling:

Tentative for 5/6/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings.

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

CONT... Delia Banuelos De Castillo

Chapter 13

Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Grant unless lender confirms debtor is current or APO.

Party Information

Debtor(s):

Delia Banuelos De Castillo

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, National

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**

Wednesday, May 6, 2020

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
(cont'd from 3-5-2020 per order continuing s/c entered 3-3-2020)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED D5-01-20**

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**

Wednesday, May 6, 2020

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**

Wednesday, May 6, 2020

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.

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 3-5-2020 per order continuing s/c entered 3-3-2020)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUED STATUS
CONFERENCE ENTERED 5-01-20**

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**

Wednesday, May 6, 2020

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.

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 3-5-2020 per order continuing s/c entered 3-3-2020)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE HEARING ENTERED 5-01-20**

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**

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

8:19-13164 Marc Wayne Wright

Chapter 7

Adv#: 8:19-01211 Alexander et al v. Wright

**#9.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(6) of the Bankruptcy Code
(cont'd from 1-23-20)(rescheduled from 5-7-2020 at 10:00 a.m.)**

Docket 1

Tentative Ruling:

Tentative for 5/6/20:

Where's the promised summary judgment motion?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/23/2020:

Status conference continued to May 7, 2020 at 10:00 a.m. Court expect motion for summary judgment in meantime.

Party Information

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

CONT... Marc Wayne Wright

Chapter 7

Defendant(s):

Marc Wayne Wright

Pro Se

Plaintiff(s):

Zachary Alexander

Represented By
Thomas J Polis

Noah Wright

Represented By
Thomas J Polis

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Wednesday, May 6, 2020

Hearing Room

5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

- #10.00 STATUS CONFERENCE RE: Complaint For:**
- I. Denial Of Discharge Pursuant To 11 U.S.C. Sec. 727(a)(2-7);
 - II. Turnover Of Real Property Pursuant To 11 U.S.C. Section 542;
 - III. Turnover Of Funds Pursuant To 11 U.S.C. Sec. 542 & 543;
 - IV. Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. Sec. 547;
 - V. Avoidance Of A Preferential Transfer Pursuan To 11 U.S.C. Sec. 548;
 - VI. Avoidance Of A Post-Petition Transfer Pursuant To 11 U.S.C. Sec. 549
- (cont'd from 4-9-20 per order on stip. to cont. s/c entered 3-16-20)
(rescheduled from 5-7-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Why no status report? The status conference has been continued by stipulation to June 4, 2020 at 10:00 a.m. as to Timothy Hughes, Jason Hughes, and Betty McCarthy. It remains on calendar to address any concerns of the non-signatory and then will be continued to June 4, 2020 at 10:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

CONT... Deborah Jean Hughes

Chapter 7

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Pro Se

Jason Paul Hughes

Pro Se

Betty McCarthy

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**

Wednesday, May 6, 2020

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.

- #11.00** 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) **(rescheduled from 4-9-2020 per court)**
(cont'd from 4-8-20 per order approving stipulation entered 3-30-20)

Docket 6

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER APPROVNG STIPULATION TO MODIFY SCHEDULING
ORDER ENTERED 5-04-20**

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**

Wednesday, May 6, 2020

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**

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

#12.00 PRE-TRIAL CONFERENCE RE: Complaint For Declaratory Relief Regarding Property Of The Estate Pursuant To 11 USC § 541 (set from s/c hrg held on 12-5-19) (rescheduled from 5-7-2020 at 10:00 a.m.)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-2-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO EXTEND DATES
MODIFIED SCHEDULING ORDER ENTERED 4-23-20**

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

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

	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
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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CONT...

Luminance Recovery Center, LLC

Chapter 7

Jeffrey I Golden

Beth Gaschen

Matthew Grimshaw

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

Wednesday, May 6, 2020

Hearing Room 5B

10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#13.00 Motion For Approval Of Chapter 11 Disclosure Statement

Docket 113

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
WITHDRAWAL FILED 3-17-20.**

Tentative Ruling:

- NONE LISTED -

Party Information

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 6, 2020

Hearing Room 5B

11:00 AM

8:13-18923 Mathew Dennis Lodermeier

Chapter 7

#14.00 Trustee's Final Report And Application For Compensation::

KAREN NAYLOR, CHAPTER 7 TRUSTEE

GOE & FORSYTHE, LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY LLP, TRUSTT'S ACCOUNTANT

Docket 94

Tentative Ruling:

Tentative for 5/6/20:
Allow as prayed. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Mathew Dennis Lodermeier

Pro Se

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

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

Wednesday, May 6, 2020

Hearing Room 5B

11:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#15.00 U.S. Trustee Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 2-26-20)

Docket 54

Tentative Ruling:

Tentative for 5/6/20:

See #16. MORs seemed to have now been filed, which was the immediate grounds for the motion, but otherwise the case seems to be drifting. Continue in tandem?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:
Status?

Tentative for 1/8/20:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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11:00 AM

CONT... 2045 E Highland, LLC
No tentative. See #2.

Chapter 11

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.

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

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
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Wednesday, May 6, 2020

Hearing Room 5B

11:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

**#16.00 Debtor's Disclosure Statement Describing Chapter 11 Plan Of Reorganization
(con't from 2-26-20)**

Docket 64

Tentative Ruling:

Tentative for 5/6/20:

The court issued its tentative 2/26 pointing out various deficiencies in the disclosure statement, as drafter. Although various events have occurred in the case, such as a sale of real property, the disclosure statement has not changed. Why haven't we seen an amended disclosure statement?

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:

This is the debtor's motion to approve as adequate its revised Disclosure Statement to accompany its First Amended Plan. The Disclosure Statement is still not adequate for at least the following reasons:

1. Sale of the real property in San Juan Capistrano, the premises for debtor's

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11:00 AM

CONT...

2045 E Highland, LLC

Chapter 11

business, is promised no later than February 28, 2020. But just how this is to be accomplished without a §363(f) order is not explained and it is obvious that a plan providing for same is not yet possible. This needs better explanation and/or a more realistic timetable.

2. The plan still needs a better discussion as to how the equity interests are being treated. Presumably this belongs in Class 4 and there should be there a discussion about the absolute priority rule and the contribution of \$20,000 in new value. Further, some discussion as to how/why that is the proper number is necessary given the requirements of "market testing" found in *Bank of America NT & SA v. 203 N. La Salle Street Partnership* 526 U.S. 434 (1999) would be in order.
3. The description about discharge at 21:1-3 should be corrected in view of § 1141(d)(3) as suggested by the United States Trustee.
4. As indicated in the opposition of Seacoast Commerce Bank a better job could be done explaining how this plan is feasible if, as Seacoast argues, only about \$13,000 is available on a net basis for monthly debt service after costs of operation. Normally, feasibility is a confirmation issue, but this would be the opportunity to explain in simple terms how this works.
5. Some discussion about the alleged \$150,000 loan to an insider needs to be discussed and if it is not to be pursued, why.
6. A consistent explanation as to whether Northeast Bank is truly a fully secured creditor at \$93,118 including post-petition assets is necessary, in order to evaluate the best interest of creditors test, as Seacoast argues.
7. Some discussion about the pending litigation against Seacoast is also necessary. Is this to be pursued post confirmation? If so, how is the litigation to be funded and what goal is sought? If a judgment were achieved what becomes of the proceeds?

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Central District of California
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Wednesday, May 6, 2020

Hearing Room 5B

11:00 AM

CONT... **2045 E Highland, LLC**
Deny

Chapter 11

Tentative for 1/8/20:

This is debtor's motion for approval of disclosure statement as required under §1125(a)(1) as containing "adequate information." An adequacy finding is opposed in oppositions filed by both the UST and Seacoast Commerce Bank. The oppositions are both well taken, and the points raised need not be restated at elaborate length here. The court is primarily concerned about the following fundamental deficiencies:

1. The plan clearly violates the absolute priority rule found at §1129(b)(2)(B) (ii). The plan proposes only 1% to unsecured creditors in installments yet the principals retain governance and stock ownership. Seacoast, which itself may be the largest unsecured creditor, plans to vote against. No new value is mentioned. So, unless something else is true this plan is patently unconfirmable, and distribution of a disclosure statement on such a plan is a waste of time and resources. While the court does not usually prejudge confirmation issues, this one is too fundamental to ignore, and so either amendment or at least explanation is required;
2. The proposed treatment of Seacoast 's secured claim is also very problematic. Debtor proposes either to cramdown a payment over 30 years at 5% or a "consensual sale" of the underlying real estate collateral. But the timing and conditions of the proposed sale are unstated, not made subject to conditions and are, thus, illusory. Can the debtor sell whenever it feels like it? Whenever in future it thinks the market has appreciated enough, even if that takes years, or never? The alternative treatment is also a non-starter. An effective 100% loan to value claim is far riskier than a more conventional loan usually made as a percentage of value. Consequently, the increased risk element must be accommodated (paid for), and anything less is a legally impermissible imposition of the

**United States Bankruptcy Court
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CONT...

2045 E Highland, LLC

Chapter 11

risk upon the lender. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Although this is usually a confirmation issue, 5% is far too low for a commercial loan under any reasonable economic analysis, i.e. prime rate is 4.75% and must be "built up" from there even under a *Till* analysis. *North Valley Mall* is not the only analysis relied upon by courts, but this court happens to believe it is the most appropriate in a business, real estate context. Therefore, the court will not approve dissemination of disclosure upon such a patently unconfirmable plan.

3. Feasibility is very questionable. Again, normally this is judged at confirmation, but the court does not ignore that the MORS show a generally declining cash position, and this is while there has been a 9-month moratorium in debt payments. Had even reduced payments been made the debtor would be by now out of money. What, if anything, is expected to change this outlook?

Deny

Party Information

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
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Wednesday, May 6, 2020

Hearing Room 5B

11:00 AM

8:19-12812 Legrace Corp

Chapter 11

#17.00 Chapter 11 Disclosure Statement dated March 31, 2020

Docket 0

Tentative Ruling:

Tentative for 5/6/20:

Off calendar in view of recent conversion to Chapter 7.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
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Wednesday, May 6, 2020

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

#18.00 STATUS CONFERENCE RE: Complaint by Plaintiff: Estate of William L. Seay against Defendant: Thomas H. Casey, Chapter 7 Trustee (cont'd from 3-26-20 per order on joint stip. re: stay of adv. action pending ruling on mtn to withdraw reference and request of cont. pending hearings entered 2-26-20) (rescheduled from 5-7-2020 at 11:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-25-20 AT 11:00 A.M.
PER ORDER ON JOINT STIPULATION RE: TO CONTINUE HEARING
ENTERED 4-23-20**

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
Kathleen J McCarthy

**United States Bankruptcy Court
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Wednesday, May 6, 2020

Hearing Room 5B

11:00 AM

CONT...

Robert A. Ferrante

Brendan Loper

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, May 6, 2020

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

- #19.00** Motion To Dismiss First Amended Adversary Complaint, Or In The Alternative, To Strike Portions
(cont'd from 3-26-20 per order on joint stip. re: stay of adv. action pending ruling on mtn to withdraw reference and req. to cont. pending hrgs entered 2-26-20)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)

Docket 11

***** VACATED *** REASON: CONTINUED TO 6-04-20 AT 11:00 A.M.
PER ORDER ENTERED ON JOINT STIPULATION RE: TO CONTINUE
HEARING ENTERED 4-23-20**

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

Trustee(s):

Thomas H Casey (TR)

Represented By

**United States Bankruptcy Court
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11:00 AM

CONT... Robert A. Ferrante

Chapter 7

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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Wednesday, May 6, 2020

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.

#20.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
**(con't from 2-6-2020 per order approving stip to cont. s/c entered 1-24-2020)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER APPROVING STIPILATION TO CONTINUE STATUS
CONFERENCE ENTERED 4-23-20**

Tentative Ruling:

Tentative for 6/27/19:
Why no status report?

Party Information

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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Wednesday, May 6, 2020

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

#21.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 2-6-20 per order approving stip. to cont. amended mtn to dsm and s/c entered 1-07-20) (rescheduled from 5-7-2020 at 11:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-06-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 4-17-20**

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
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Wednesday, May 6, 2020

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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

#22.00 Motion to Dismiss Adversary Proceeding
(con't from 2-06-20 per order approving stip. to cont. amended mtn to dismiss and s/c entered 1-07-20) (rescheduled from 5-7-2020 at 11:00 a.m. per court)

Docket 3

***** VACATED *** REASON: CONTINUED TO 8-06-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 4-17-20**

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**

Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

8:18-11474 Brian G. Corntassel

Chapter 13

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER
(re-scheduled from 4-29-20 at 10:30 to 10:00 a.m. per courts own motion)
(cont'd from 4-29-20 per order granting stip. to cont. entered 4-22-20)

HUNTINGTON SHORECLIFF, LP and HS MANAGEMENT, LP
Vs
DEBTOR

Docket 65

Tentative Ruling:

Tentative for 5/13/20:

This is the motion for relief of stay of a mobile home park, Huntington Shorecliff, L.P. The debtor has a month to month lease over a rental space within the park. The immediate genesis of the motion was a rent default occurring in December, 2019. Much ink is spent in arguments about whether the 3-day notice was properly served and about the LBR requirement that the debtor also be served with motions for relief of stay. None of that much matters since this court does not pass upon the efficacy of a 3-day notice preliminary to an action in unlawful detainer under state law, and the LBR argument is not persuasive since it is evident counsel has had sufficient opportunity to file both opposition and reply, so lack of notice is at best theoretical. From the papers one learns that this leasehold was not mentioned at all in the confirmed plan, which is surprising given the argument that this lease is now somehow "necessary to an effective reorganization" within the meaning of Â§362(d)(2). But the key point is largely ignored; this is a month to month lease which renders it of small value in any event since it cannot be effectively assumed and assigned even if it "rode through" the bankruptcy proceeding as debtor argues. Also, the court presumes that the plan was implicit that all continuing obligations on such things as rent would be kept current, as due when due. This court takes a very dim view of post confirmation defaults, even as to debts not specifically articulated in the plan. It is not persuasive to argue, as debtor apparently does here, that it would be convenient for the debtor to have time to sell the mobilome which rests upon

**United States Bankruptcy Court
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Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

CONT...

Brian G. Corntassel

Chapter 13

the disputed site so as to extract maximum value for the personal property enjoying the protection of the bankruptcy court. Had that been something within the province of this court it should have been included within the plan. It cannot be engrafted upon it after the fact, as debtor now suggests. This is a dispute that belongs with the unlawful detainer state court.

Grant.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Brian G. Corntassel

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 13, 2020

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

USB LEASING
V.
DEBTOR

Docket 45

Tentative Ruling:

Tentative for 5/13/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

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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Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

8:19-11719 Joseph A. Devera

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA
Vs
DEBTOR

Docket 45

Tentative Ruling:

Tentative for 5/13/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Joseph A. Devera

Represented By
Christopher J Langley

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, May 13, 2020

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10:00 AM

CONT... Joseph A. Devera

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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Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

8:20-10666 Jonathan Scott Emerich and Hilary Fuller Emerich

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA
Vs
DEBTORS

Docket 10

Tentative Ruling:

Tentative for 5/13/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jonathan Scott Emerich

Represented By
Rex Tran

Joint Debtor(s):

Hilary Fuller Emerich

Represented By
Rex Tran

**United States Bankruptcy Court
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Santa Ana
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Wednesday, May 13, 2020

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10:00 AM

CONT... Jonathan Scott Emerich and Hilary Fuller Emerich

Chapter 7

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

8:16-14563 Sherri Lynn Spoor

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-24-2020)**

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 68

Tentative Ruling:

Tentative for 5/13/20:

As stated before, debtor has not really made an argument based upon law but only upon a general appeal to "equity" that she should be given more time to attempt a sale of the house in order to capture some of the equity therein. This would be a more compelling argument had such a sale been part of the plan. Instead, it appears that debtor has defaulted on the plan by not making mortgage payments timely. On the other hand, movant needs to channel its motion on a specific theory for relief: either §§362(d)(1) "cause", or (d)(2) "no equity and not necessary to a reorganization." Apparently (d)(2) does not apply because there is, in fact, "equity" in the property. The question is whether post-petition defaults and failure to come current constitutes "cause" within the meaning of the statute. The answer is "yes" but the court is given some latitude in either terminating or modifying the stay, as justice requires. Presumably there are other creditors with an interest in recovering some of that equity, so the court must be concerned with that issue. In order to fashion a remedy that considers all issues the court will modify the stay to be lifted July 1, 2020 unless that deadline is extended for cause upon the motion of a Chapter 7 trustee.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

CONT... Sherri Lynn Spoor

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/24/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/10/20:
The court would be more receptive to the requested delay were the sale part of the plan or there were not post confirmation arrears of three months. There is no indication that a trustee's sale is imminent so debtor has at least 60 days in any event. *Grant.*

Party Information

Debtor(s):

Sherri Lynn Spoor

Represented By
Sunita N Sood

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Nancy L Lee

**United States Bankruptcy Court
Central District of California
Santa Ana
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CONT... Sherri Lynn Spoor

Darlene C Vigil

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, May 13, 2020

Hearing Room 5B

10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 7

#6.00 Chapter 7 Trustee's Motion For Order Authorizing Trustee to Continue to Operate Debtor's Business Pursuant to 11 U.S.C. Section 721, Use Property of the Estate Pursuant to 11 U.S.C. Sections 363(b)(1) and (c)(1), and Pay Necessary Expenses
(OST Signed 3-27-20)
(cont'd from 4-01-20)

Docket 245

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION BY CHAPTER 7 TRUSTEE FOR ORDER
AUTHORIZING TRUSTEE TO CONTINUE TO OPERATE DEBTOR'S
BUSINESS FILED 5-11-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad

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

Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

#7.00 Motion For An Order Disallowing Proof Of Claim No. 2 (As Amended) Filed By Department Of Treasury - Internal Revenue Service Against Visiblegains, Inc (cont'd from 3-25-20 per order approving stip. to cont. hrg entered 3-20-20)

Docket 85

***** VACATED *** REASON: CONTINUED TO 6-24-20 AT 10:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON MOTION FOR ORDER DISALLOWING PROOF OF
CLAIM NO. 2 - IRS ENTERED 5-08-20**

Tentative Ruling:

- NONE LISTED -

Party Information

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
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Wednesday, May 13, 2020

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

#8.00 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 3-5-2020)(rescheduled from 5-14-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE RE-SCHEDULED FOR 7/23/2020 AT 10:00 A.M. PER ANOTHER SUMMONS ISSUED ON 5/8/2020**

Tentative Ruling:

Tentative for 3/5/20:
What is status of answer/default?

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

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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10:00 AM

CONT... Zia Shlaimoun Chapter 7

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
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
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Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 11

Adv#: 8:20-01002 Remares Global, LLC v. Olga Shabanets, as trustee of the 2012 Irrevocable

**#9.00 STATUS CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(cont'd from 2-27-20)(rescheduled from 5-14-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 5/13/20:

Deadline for completing discovery: Dec. 11, 2020

Last date for filing pre-trial motions: Jan. 25, 2021

Pre-trial conference on: Feb. 18, 2021 @ 10 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by n/a within n/a days.

One day of mediation to be completed by n/a.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/27/20:

Deadline for completing discovery: August 1, 2020

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Santa Ana
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Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 11

Last date for filing pre-trial motions: August 24, 2020

Pre-trial conference on: September 10, 2020 at 10:00AM

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Olga Shabanets, as trustee of the

Pro Se

Olga Shabanets

Pro Se

Igor Shabanets

Pro Se

Merrill Lynch, Pierce, Fenner &

Pro Se

Plaintiff(s):

Remares Global, LLC

Represented By
Bob Benjy

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, May 13, 2020

Hearing Room 5B

10:00 AM

8:20-10534 Nabil Machhor and Fadia A. Machhor

Chapter 7

- #9.10 Motion For Order: (1) Approving Settlement And Compromise Of Disputes By And Between Chapter 7 Trustee And Farid Chahla; And (2) Granting Related Relief To Implement The Settlement, Including The Sale Of Assets Of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §363(b)(1) and (f) **(OST Signed 5-07-20)**

Docket 26

Tentative Ruling:

Tentative for 5/13/20:

This is a close call given the rushed nature of the motion, leaving little to no time for oppositions. The court wonders why the Trustee did not approach the problem by simply avoiding via stipulation the lien as unperfected under strong arm powers of section 544, then preserve the lien for the estate under section 551, and sell the right, title, and interest of the estate in both lien and property, and let the buyer sort it out by foreclosing. One supposes the answer has something to do with landlord demands and the relatively low dollar values involved.

Instead Trustee argues that the motion should be granted under 11 U.S.C. §363(f)(1), (f)(2), and/or (f)(5). Particularly noteworthy is Trustee's interpretation of §363(f)(5), which finds some purchase among courts in this circuit, but the view is still controversial. For example, in *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25 (BAP 9th Cir. 2008), the court narrowly interpreted §363(f)(5) as not requiring payment of junior liens in full because interpreting it otherwise would mirror §363(f)(3), making paragraph (5) superfluous. *Id.* at 43. Instead, the *Clear Channel* court noted that, "[u]nder the view that full payment is not necessary, it is not the amount of the payment that is at issue, but whether a 'mechanism exists to address extinguishing the lien or interest without paying such interest in full.' Other courts have required a showing of the basis that could be used to compel acceptance of less than full monetary satisfaction. *Id.* The court then explained, "[a]lthough this view leads to a relatively small role for paragraph (5), we are not effectively writing it out of the Code. Paragraph (5) remains one of five different justifications for selling free and clear of interests, and its

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10:00 AM

CONT... **Nabil Machhor and Fadia A. Machhor**

Chapter 7

scope need not be expansive or all-encompassing. So long as its breadth complements the other four paragraphs consistent with congressional intent, without overlap, our narrow view is justified." *Id.*

Other courts in this circuit have also endorsed this view. For example, in *In re Jolan*, 403 B.R. 866 (Bankr. W.D. Wash. 2009), the court explained, "as in *Clear Channel*, subsection (f)(5) is the only subsection of § 363 which might here permit the trustee's proposed auction if the proceeds do not cover the debts secured by the collateral sold. But there are legal and equitable proceedings in Washington in which a junior lienholder could be compelled to accept a money satisfaction[.]" *Id.* at 869. The court explained further, "[b]ecause there are in Washington legal and equitable proceedings by which lienholders may be compelled to accept money satisfactions, § 363(f)(5) here permits a sale free and clear of liens, with the liens attaching to the proceeds, notwithstanding that those proceeds may be insufficient to pay all liens. *Id.* at 870.

Here, Trustee presumably argues that under *Clear Channel* and *Jolan*, if the Buyer foreclosed on its interest outside of bankruptcy, every junior interest in the Assets would be extinguished under California law, notwithstanding that the sale price may or may not pay such extinguished interests in full, or at all. In such a foreclosure, liens junior to the Buyer would be forced to accept the distribution allowed by the resulting foreclosure sale price, in full satisfaction of its released lien. This, Trustee presumably argues, would satisfy §363(f)(5) consistent with the interpretation in *Clear Channel* and *Jolan*.

The reality is that this case is one of relatively few dollars and, if Trustee's motion is granted, would likely bring in something modest that could be distributed to the estate's creditors. But the court cannot simply be a rubber stamp, especially when motions are brought on a rush basis. There are limits to what the court can countenance on a "quick and dirty" basis, particularly as in this case, with only limited analysis. In sum, the court would like a better explanation from Trustee, and much may depend on whether there is opposition.

No tentative.

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10:00 AM

CONT... Nabil Machhor and Fadia A. Machhor

Chapter 7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Nabil Machhor

Represented By
Joseph A Weber

Joint Debtor(s):

Fadia A. Machhor

Represented By
Joseph A Weber

Trustee(s):

Richard A Marshack (TR)

Represented By
Melissa Davis Lowe
James C Bastian Jr

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Hearing Room 5B

11:00 AM

8:19-12162 John Louis Katangian and Shelline Marie Katangian

Chapter 7

**#10.00 STATUS CONFERENCE RE: Status Report Of Chapter 7 Trustee Thomas H. Casey
(con't from 3-3-2020)(rescheduled from 5-12-2020 at 10:00 a.m. per court)**

Docket 89

Tentative Ruling:

Tentative for 5/13/20:
In view of the Trustee's report, off calendar.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/3/20:
No tentative.

Party Information

Debtor(s):

John Louis Katangian

Represented By
Michael R Totaro

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11:00 AM

CONT... John Louis Katangian and Shelline Marie Katangian

Chapter 7

Joint Debtor(s):

Shelline Marie Katangian

Represented By
Michael R Totaro

Trustee(s):

Thomas H Casey (TR)

Pro Se

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Hearing Room 5B

11:00 AM

8:17-12346 Minh Canh Lam and Dao Mong Dinh

Chapter 7

#11.00 Objection to Debtors' Claimed Homestead Exemption
(rescheduled from 5-12-2020 at 10:00 a.m. per court)

Docket 0

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION LIMITING DEBTOR'S CLAIM HOMESTEAD
EXEMPTION TO \$100,000.00 ENTERED 4-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Minh Canh Lam

Represented By
Hai H Lai

Joint Debtor(s):

Dao Mong Dinh

Represented By
Hai H Lai

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey S Shinbrot

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Wednesday, May 13, 2020

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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

#12.00 Motion For Order Extending Time To File Avoidance Actions Under 11 U.S.C. § 546

Docket 41

Tentative Ruling:

Tentative for 5/13/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

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Wednesday, May 13, 2020

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11:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#13.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363 (cont'd from 1-22-20)

Docket 7

Tentative Ruling:

Tentative for 5/13/20:

This matter is on calendar because permitted use of cash collateral is set to expire as of the hearing per previous order. Nothing further has been filed as of 5/8. Status? The March MOR shows slightly positive cash flow, so, absent objection, the logical order would seem to be continued authority on same terms and conditions for about 60 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

Debtor filed an amended motion for use of cash collateral on 4/1/20. Unfortunately, this amended motion is likely untimely because there is nearly no time for any other party to respond before the hearing date on 4/8. In any

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11:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

case, the new amended motion does not appear to address Banc of California's objections to continued use of cash collateral. Therefore, the amended motion should be continued to allow creditors, including Banc of California, adequate time to respond. In the meantime, Debtor should answer Banc of California's allegations of misusing cash collateral.

Continue for about two weeks on same terms. Debtor to address Banc Of California's points. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:

Continue same terms until April 8, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger

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11:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

#14.00 Motion to be relieved as General Insolvency Counsel for Debtor in Possession
Bradley Ray Fox

Docket 27

Tentative Ruling:

Tentative for 5/13/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Michael R Totaro

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Hearing Room 5B

11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#15.00 Motion For An Order Authorizing Debtor Assume Certain Executory Contracts And Unexpired Leases Pursuant to Bankruptcy Code Section 365(a)

Docket 168

Tentative Ruling:

Tentative for 5/13/20:

This is the Debtor's motion to assume various operating agreements and oil and gas leases under 11 U.S.C. §365. It has drawn only one opposition. That opposition concerns the three leases, with amendments, known collectively as the "Dowling Lease" regarding certain formerly operating oil fields in Anaheim. The opposition was filed by the assignees of the beneficial interest under the Dowling Lease, The Politski Survivors' Trust ("PST").

PST takes issue with the motion for the following reasons:

- (1) It is argued Debtor's assumption of the Dowling Lease does not satisfy the 'Business Judgment Standard' as Debtor is continuing to lose money at an alarming rate as evidenced by Debtor's MORs;
- (2) Debtor has failed to satisfy the requirements for assumption of the Dowling Lease. Debtor has not paid PST its regular payments due under the lease in full or in a timely manner for several months (including owed royalty payments). PST issued a Notice of Default to Debtor April 8, 2020. Debtor has not cured the deficiencies nor demonstrated a future ability to cure the defaults and remain current on its obligations to PST.
- (3) PST argues that the absence of oil production revenue justifies PST's request that, as a condition to assumption, the Debtor must, at a minimum, secure an appropriate surety bond to cover all projected cap

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11:00 AM

CONT...

Bridgemark Corporation

Chapter 11

and plug costs for each of the four Dowling Wells;

(4) The Dowling Lease remains in default as no royalty payments have been made by Debtor to PST from "Proceeds of all Oil Produced" in the most recent five months. Royalties have not been paid on oil produced on or after January 1, 2020; and

(5) The Dowling Leases remains in default since oil is not being produced in "Paying Quantities". As the court understands this last argument, absence of any production is itself a default under the language of the leases, leading one supposes to termination.

It appears the genesis of these problems was the lawsuit brought by Placentia Development Company ("PDC") prepetition resulting in a judgment that Debtor is unable to pay. To assist collection PDC sued Phillips 66 and PBF Holdings (collectively "customers") prepetition to intercept the revenue otherwise due to the Debtor from customers for extraction of oil on various leases, including the Dowling Lease. These customers have apparently not paid the Debtor for any extracted oil since January 2020, and it was not clear from the papers whether production on the Dowling Wells also ceased since that date. Although Debtor has reportedly paid some amounts on the Dowling Lease post-petition from its other resources, it admittedly has not paid what PST has expected as its normal monthly payments. The customers cancelled their contracts with Debtor as of April 1.

First, a clarification on terms. While the interests in question here are commonly referred to as "oil and gas leases", they could more properly be referred to in legal terminology as "profits à prendre" which simply means the right to enter and take products upon another's land. From what the court can see, this should not change the analysis since they are still executory contracts within the meaning of §365.

On the question of whether the assumption proposed here meets the "business judgment standard" the court does not see the question to be as

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CONT... **Bridgemark Corporation**

Chapter 11

nearly obvious as argued. Yes, the production to date has been disastrous, with the twin blows of a collapse in the oil market and a worldwide pandemic. The Debtor has lost a lot of money, apparently. No one, including Debtor, apparently, argues that this can be allowed to last much longer. But the court observes that Debtor is apparently in earnest discussions with PDC, and persons far more savvy in oil and gas issues than this court (or PST, for that matter) seem to believe that keeping this portfolio of interests intact, makes strategic sense. Maybe a turnaround is foreseen. Maybe an intact portfolio is a prerequisite to any deal with PDC. We are almost to the point now that any administrative claim that might saddle the estate on account of a post-petition default on an assumed Dowling Lease would yield only pennies on what is likely to be on an enormous steaming hole of a case. Stated differently, it is so bad at this point that maybe hoping the Debtor can make a deal with PDC is the only play that makes any sense. The court is not persuaded that it can, on this record, contradict the Debtor's business judgment.

A somewhat closer question is whether the Dowling Lease is in serious default for the four-month failure to tender lease payments. The court is persuaded that Debtor's reading of the language of ¶ 1 of the Dowling Lease is at least plausible, i.e. that all that is owed is a percentage of revenue *actually received* from oil production royalties. Since Phillips 66 and PBF Holdings have not paid anything since January, a failure to remit to Debtor a percentage of zero is maybe not a default. A trickier argument still is that continuous production of "paying quantities" of oil is (at least implicitly) the *sine qua non* of the Dowling Lease under ¶ 8. Here, PST cites various California authorities that have held that in determining the meaning of this and similar language the court examines the ability to show a profit over an extended period, net of operating expenses. See e.g. *Transport Oil Co. v. Exeter Oil Co.*, 84 Cal. App.2d 616 (1948); *Lough v. Coal Oil, Inc.*, 217 Cal. App. 3d 1518 (1990). Notably, as the *Lough* court observed,

"Paying quantities' is defined to be quantities of oil or gas,
the proceeds of which are sufficient to exceed ongoing operating

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CONT...

Bridgemark Corporation

Chapter 11

costs. The initial drilling and equipping costs (i.e., 'sunk' costs) are excluded from this calculation. There is no hard-and-fast rule for determining over what period the paying quantities analysis must be made. Obviously, the period cannot be unreasonably short (i.e., a few days or even weeks) or else a lessor could claim that a lease had terminated when in fact it was merely shut-in for repairs or maintenance. On the other hand, using an excessively long period of many years could keep a lease 'alive' long after it had become uneconomic and was no longer producing in 'paying quantities' by using high initial and very short-lived production rates to claim an artificial 'profit' years later through averaging." *Id.* at 1528.

Therefore, as the *Lough* court noted, we cannot define "paying quantities" based on too short a period, particularly, as here, where the lease language even contemplates possible suspension based on unforeseen circumstances.

Furthermore, much of the edge is taken off PST's argument in this case because of the language of the Dowling Lease at the end of ¶8 which provides: "Drilling and producing operations hereunder may also be suspended while the price offered generally to producers in the same vicinity from said land is seventy five cents or less per barrel at the well, or when there is no available market for the same at the well." If the court is correctly informed, the price offered for oil recently may be lower than even this threshold. Debtor also points to ¶13 which provides for suspension on account of, among other things "conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not." The turmoil encountered in the first and second quarters of this year might well qualify under this provision as well. In any event, as Debtor aptly argues, the authorities cited by PST involved considerably longer periods of unprofitable operations than the five months at issue here.

PST argues for the condition of posting a bond or otherwise providing

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CONT... **Bridgemark Corporation**

Chapter 11

for capping and plugging costs. But the court sees no provision in the Dowling Lease requiring this.

But the court sees the main obstacle to this motion in the language of section 365(b)(1)(C) which requires not only cure of defaults [and for reasons stated these may be nonexistent or minor] but "adequate assurance of future performance under such contract or lease." Not much appears in the papers as to how all of this is going to work out long term. Is the Debtor going to recommence new operations on the Dowling Wells? When and with what capital? Indeed, this case requires immediate and threshold explanation as to how any of this works and why this court should allow any more months of accumulating losses. Until a clearer picture emerges on this front, the court does not see how it can find adequate assurance of future performance as to the Dowling Lease.

no tentative

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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

Wednesday, May 20, 2020

Hearing Room 5B

9:30 AM

8:19-14436 Lolita June Howard

Chapter 7

**#1.00 Pro se Reaffirmation Agreement Between Debtor and Americredit Financial Services, Inc. Dba GM Financial (RE 2018 Chevrolet Malibu - \$27,756.40)
[CB Case]**

Docket 19

Tentative Ruling:

Tentative for 5/20/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Lolita June Howard	Pro Se
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Trustee(s):

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

Wednesday, May 20, 2020

Hearing Room 5B

9:30 AM

8:20-10032 Christina Olinger

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and San Diego County Credit Union [RE: 2015 Mini Convertible - Amount: \$13,842.04] **[SC CASE]**

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Olinger

Represented By
Michael D Franco

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, May 20, 2020

Hearing Room 5B

9:30 AM

8:20-10133 Maria Montoya

Chapter 7

#3.00 Reaffirmation Agreement Between Debtor and JPMorgan Chase Bank, N.A.
(RE: 2014 Honda Accord - \$7,101.19) **[ES CASE]**

Docket 18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Montoya

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, May 20, 2020

Hearing Room 5B

9:30 AM

8:20-10138 Veronica Delgado Martinez

Chapter 7

#4.00 Pro se Reaffirmation Agreement Between Debtor and Ally Bank [RE: 2019 Nissan Altima - Amount: \$26,044.96] [SC CASE]

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Veronica Delgado Martinez

Represented By
Omar Zambrano

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, May 20, 2020

Hearing Room 5B

9:30 AM

8:20-10503 Juan Gerardo Lopez Morales

Chapter 7

#5.00 Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union [2015- NISSAN ROQUE]

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Gerardo Lopez Morales

Represented By
Francis Guilardi

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, May 20, 2020

Hearing Room 5B

10:00 AM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY

CAB WEST, LLC
Vs
DEBTOR

Docket 85

Tentative Ruling:

Tentative for 5/20/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Cab West LLC

Represented By
Sheryl K Ith

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

Wednesday, May 20, 2020

Hearing Room 5B

10:00 AM

CONT... Charles Ragan Peyton, III

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Richard G Heston

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

Wednesday, May 20, 2020

Hearing Room 5B

10:00 AM

8:20-10666 Jonathan Scott Emerich and Hilary Fuller Emerich

Chapter 7

#7.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SANTANDER CONSUMER USA INC
Vs
DEBTORS

Docket 12

Tentative Ruling:

Tentative for 5/20/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jonathan Scott Emerich

Represented By
Rex Tran

Joint Debtor(s):

Hilary Fuller Emerich

Represented By
Rex Tran

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

Wednesday, May 20, 2020

Hearing Room 5B

10:00 AM

CONT... Jonathan Scott Emerich and Hilary Fuller Emerich

Chapter 7

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Wednesday, May 20, 2020

Hearing Room 5B

10:00 AM

8:19-14445 Kimberly S Connell

Chapter 7

**#8.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-18-20)(rescheduled from 5-19-2020 at 10:00 a.m. per court)**

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 14

Tentative Ruling:

Tentative for 5/20/20:
Grant provided no foreclosure sale actually occurs before September 15, 2020.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/18/20:
Stipulation re: sale of real property was filed February 3, 2020 and remains pending. Does the stipulation re: sale render the motion moot? Status?

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

Wednesday, May 20, 2020

Hearing Room 5B

10:00 AM

CONT... Kimberly S Connell

Chapter 7

Tentative for 1/14/20:
Grant. Appearance is optional. Award of fees and costs is not a function of this court in this context.

Party Information

Debtor(s):

Kimberly S Connell	Pro Se
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Movant(s):

U.S. BANK NATIONAL	Represented By Diane Weifenbach
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Trustee(s):

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

Wednesday, May 20, 2020

Hearing Room 5B

10:00 AM

8:20-10727 Carlos R. Andrade

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY

WEST COAST SERVICING, INC
Vs
DEBTOR

Docket 21

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 5-18-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos R. Andrade

Represented By
James D. Hornbuckle

Movant(s):

West Coast Servicing, Inc.

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**

Wednesday, May 20, 2020

Hearing Room 5B

11:00 AM

8:20-10441 Scot Matteson

Chapter 7

#10.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against an Individual (cont'd from 4-22-20 per order approving third stip. to cont. status hrg entered 4-13-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/23/20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
STATUS HEARING AND TO EXTEND TIME TO FILE RESPONSE TO
INVOLUNTARY PETITION FILED BY ELIZABETH NIGRO &
ASSOCIATES, APC ENTERED 5-12-20**

Tentative Ruling:

Tentative for 3/10/20:

The timing in this case is muddled because two summons were issued and the deadline to respond to the reissued summons is after the hearing on the status conference in this case. It might be best to continue this status conference to March 17, 2020 at 10:00 a.m. so that the court can evaluate any response that is filed. If no response is received, the order for relief should be entered.

Party Information

Debtor(s):

Scot Matteson

Pro Se

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

Wednesday, May 20, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#11.00 Lexington National Insurance Corporation's Motion For Order Compelling Select Portfolio Servicing, Inc. To Produce Settlement Agreement

Docket 568

***** VACATED *** REASON: CONTINUED TO 6-09-20 PER ORDER APPROVING FOURTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND SELECT PORTFOLIO SERVICING, INC AND MOTION TO DISALLOW PROOFS OF CLAIM NO. 44 AND 67 ENTERED 5-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Wednesday, May 20, 2020

Hearing Room 5B

1:30 PM

8:19-13139 Brian Leach

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 2

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, May 20, 2020

Hearing Room 5B

1:30 PM

CONT... Brian Leach

Chapter 13

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.

Party Information

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, May 20, 2020

Hearing Room 5B

1:30 PM

8:19-13886 Gary C. Macrides

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(cont'd from 2-19-20)
(cont'd from 3-18-20)**

Docket 0

Tentative Ruling:

Tentative for 3/18/20:

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Party Information

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, May 20, 2020

Hearing Room 5B

1:30 PM

8:19-14502 Andy T. Torres

Chapter 13

**#3.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-2020)**

Docket 23

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

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

Wednesday, May 20, 2020

Hearing Room 5B

1:30 PM

CONT... Andy T. Torres

Chapter 13

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Movant(s):

Andy T. Torres

Represented By
Richard G Heston
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 20, 2020

Hearing Room 5B

1:30 PM

8:19-14634 Trinna Mong Trinh Nguyen

Chapter 13

**#4.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 5

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, May 20, 2020

Hearing Room

5B

1:30 PM

CONT... Trinna Mong Trinh Nguyen

Chapter 13

Tentative for 2/19/20:
Status of delinquencies, mortgage and tax statements, etc.?

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen	Pro Se
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Movant(s):

Trinna Mong Trinh 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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10493 Terry Gonzalez

Chapter 13

#5.00 Confirmation of Chapter 13 Plan

Docket 17

Tentative Ruling:

Tentative for 5/20/20:

The objections of the Trustee and secured creditor are well-taken. There appear to be feasibility questions, and at the very least the amount of arrearages must be correctly observed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10531 Bradley Ray Fox

Chapter 13

#6.00 Confirmation Of The Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 3-09-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradley Ray Fox

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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10549 Hilarion Lopez

Chapter 13

#7.00 Confirmation Of The Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASED DISMISSED 3-09-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hilarion Lopez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10626 Pamela J. Skiles

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

Docket 2

***** VACATED *** REASON: RESCHEDULED TO 6-17-20 AT 1:30 P.M.
PER AMRANE COHEN'S OFFICE NOTICE FILED 3-18-20 - SEE
DOCUMENT #14**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamela J. Skiles

Represented By
Christine A Kingston

Movant(s):

Pamela J. Skiles

Represented By
Christine A Kingston
Christine A Kingston
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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10644 Robert Broderick

Chapter 13

#8.10 Confirmation of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 3-16-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Broderick

Represented By
Stephen L Burton

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10675 Robert Carpenter

Chapter 13

#9.00 Confirmation Of The Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 3-16-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Carpenter

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 20, 2020

Hearing Room 5B

1:30 PM

8:20-10773 Dianne Dobson-Sojka

Chapter 13

#9.10 Confirmation of Chapter 13 Plan

Docket 0

Tentative Ruling:

Tentative for 5/20/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Dianne Dobson-Sojka	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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10784 My Tran Buchholtz

Chapter 13

#10.00 Confirmation Of The Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 4-01-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

My Tran Buchholtz

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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10792 Bradley Burge Mugar, Jr

Chapter 13

#11.00 Confirmation Of The Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 4-23-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradley Burge Mugar 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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10801 Michael Torres and Maria Jay Rneiznann C Gemo

Chapter 13

#12.00 Confirmation Of The Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Torres

Represented By
Julie J Villalobos

Joint Debtor(s):

Maria Jay Rneiznann C Gemo

Represented By
Julie J Villalobos

Movant(s):

Michael Torres

Represented By
Julie J Villalobos

Maria Jay Rneiznann C Gemo

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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10826 Gerardo Grella

Chapter 13

#13.00 Confirmation Of The Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 4-01-20

Tentative Ruling:

- NONE LISTED -

Party Information

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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-10836 Gary D Davis

Chapter 13

#14.00 Confirmation Of The Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR -CASE DISMISSED 4-01
-20

Tentative Ruling:

Confirmation Of The Chapter 13 Plan

Party Information

Debtor(s):

Gary D Davis

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 20, 2020

Hearing Room 5B

1:30 PM

8:20-10882 Craig A. Durfey and Sharon K. Durfey

Chapter 13

#15.00 Confirmation Of The Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Craig A. Durfey

Represented By
Christine A Kingston

Joint Debtor(s):

Sharon K. Durfey

Represented By
Christine A Kingston

Movant(s):

Craig A. Durfey

Represented By
Christine A Kingston
Christine A Kingston
Christine A Kingston

Sharon K. Durfey

Represented By
Christine A Kingston
Christine A Kingston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, May 20, 2020

Hearing Room 5B

1:30 PM

8:20-10930 Roger Boose

Chapter 13

#16.00 Confirmation Of The Chapter 13 Plan

Docket 7

Tentative Ruling:

Tentative for 5/20/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Roger Boose

Represented By
Gary Polston

Movant(s):

Roger Boose

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, May 20, 2020

Hearing Room 5B

1:30 PM

8:20-10939 Erica Brock

Chapter 13

#17.00 Confirmation Of The Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Erica Brock

Represented By
Amanda G Billyard

Movant(s):

Erica Brock

Represented By
Amanda G Billyard

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, May 20, 2020

Hearing Room 5B

1:30 PM

8:20-10946 Thomas Donald Teeples, Jr.

Chapter 13

#18.00 Confirmation Of The Chapter 13 Plan

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Donald Teeples Jr.

Represented By
Christopher P Walker

Movant(s):

Thomas Donald Teeples Jr.

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 20, 2020

Hearing Room 5B

1:30 PM

8:20-10960 Chad J. Latham

Chapter 13

#19.00 Confirmation Of The Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chad J. Latham

Represented By
Joseph A Weber

Movant(s):

Chad J. Latham

Represented By
Joseph A Weber
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, May 20, 2020

Hearing Room 5B

1:30 PM

8:20-11067 Thomas Casey Beales

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

Docket 2

***** VACATED *** REASON: RE-NOTICE TO 6-17-20 AT 1:30 P.M. PER
COHEN'S OFFICE 4-23-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Casey Beales

Represented By
Anthony B Vigil

Movant(s):

Thomas Casey Beales

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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

1:30 PM

8:20-11068 Celeste Maria Spellmeyer

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Celeste Maria Spellmeyer

Represented By
Anthony B Vigil

Movant(s):

Celeste Maria Spellmeyer

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 20, 2020

Hearing Room 5B

3:00 PM

8:15-11274 Michael Kevin Fountain and Wendy L. Christensen

Chapter 13

**#22.00 Trustee's Motion To Dismiss Case Failure To Complete The Plan Within Its Terms.
(cont'd from 4-15-20)**

Docket 77

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL FILED 5/18/2020**

Tentative Ruling:

Tentative for 4/15/20:

The court is unclear why the Trustee believes \$34,300 is currently due under the plan. Is this because we have reached (or nearly so) the 5 year mark with this sum needed to complete a percentage? If that is true, how can this deficiency be cured by modification? Further, what's the argument for a last-minute modification? How can it be argued that debtors failed to see this end of the road coming? See #4. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Continue to April 15, 2020 @ 3:00PM.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to

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

Wednesday, May 20, 2020

Hearing Room 5B

3:00 PM

CONT... Michael Kevin Fountain and Wendy L. Christensen Chapter 13

implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:

Grant unless both current on existing plan payments and motion to modify is on file sufficient to account for how the \$34,300 needed will be met.

Party Information

Debtor(s):

Michael Kevin Fountain

Represented By
Richard G Heston

Joint Debtor(s):

Wendy L. Christensen Fountain

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, May 20, 2020

Hearing Room 5B

3:00 PM

8:15-11274 Michael Kevin Fountain and Wendy L. Christensen

Chapter 13

#23.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(cont'd from 4-15-20)

Docket 86

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION TO MODIFY PLAN FILED 5-19-20**

Tentative Ruling:

Tentative for 5/20/20:

Status on the missing returns? What if anything has changed since last hearing? Does the debtor believe that recent amendments give it more runway on the plan term question?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

The debtors propose to modify their plan from 100% to 83%. First, any modification is out of the question without having given the Trustee all of the returns he requests, by the time of the hearing. Second, a better explanation is needed as to why the debtors would wait until the figurative "end of the road" to argue for a downward adjustment on the percentage. Certainly, it cannot be

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

Wednesday, May 20, 2020

Hearing Room

5B

3:00 PM

CONT... **Michael Kevin Fountain and Wendy L. Christensen**

Chapter 13

argued that no one saw this coming? If there was some unforeseeable calamity, what was it and when did it become known? Absent this, why the wait? While the percentage actually paid is laudable that cannot by itself justify such a departure from the plan. Otherwise confirmed plans are mere suggestions which everyone will then adjust as the 58th month approaches to conform to what was actually done. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Michael Kevin Fountain

Represented By
Richard G Heston

Joint Debtor(s):

Wendy L. Christensen Fountain

Represented By
Richard G Heston

Movant(s):

Michael Kevin Fountain

Represented By
Richard G Heston

Wendy L. Christensen Fountain

Represented By
Richard G Heston
Richard G Heston

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

Wednesday, May 20, 2020

Hearing Room 5B

3:00 PM

CONT... Michael Kevin Fountain and Wendy L. Christensen

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, May 20, 2020

Hearing Room 5B

3:00 PM

8:15-13752 Laura Diaz

Chapter 13

#24.00 Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision
(cont'd from 3-18-20)

Docket 63

Tentative Ruling:

Tentative for 5/20/20:
Same. Grant unless current. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Grant unless current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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

Wednesday, May 20, 2020

Hearing Room 5B

3:00 PM

CONT... Laura Diaz

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Laura Diaz

Represented By
Rebecca Tomilowitz

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, May 20, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

**#25.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments
(cont'd from 4-15-20)**

Docket 74

Tentative Ruling:

Tentative for 5/20/20:
See modification motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:
Continue to coincide with hearing on the modification motion filed April 2.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, May 20, 2020

Hearing Room 5B

3:00 PM

CONT... Timothy Dale Cox and Diane Gloria Cox Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

Trustee(s):

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 20, 2020

Hearing Room 5B

3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

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

Docket 58

Tentative Ruling:

Tentative for 5/20/20:
Grant unless current. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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**

Wednesday, May 20, 2020

Hearing Room 5B

3:00 PM

8:19-14634 Trinna Mong Trinh Nguyen

Chapter 13

#27.00 Objection to Claim Number 1-1 by Claimant American Express National Bank.

Docket 28

Tentative Ruling:

Tentative for 5/20/20:
Sustain. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen

Represented By
Michael D Franco

Movant(s):

Trinna Mong Trinh Nguyen

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, May 20, 2020

Hearing Room 5B

3:00 PM

8:19-14634 Trinna Mong Trinh Nguyen

Chapter 13

#28.00 Objection to Claim Number 2-1 filed by Claimant American Express National Bank.

Docket 29

Tentative Ruling:

Tentative for 5/20/20:
Sustain. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen

Represented By
Michael D Franco

Movant(s):

Trinna Mong Trinh Nguyen

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 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

3:00 PM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

**#29.00 Confirmation of Chapter 13 Plan
(cont'd from 3-18-20)**

Docket 14

***** VACATED *** REASON: CONTINUED TO 7-15-20 AT 3:00 P.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON DEBTOR'S MOTION TO VALUE COLLATERAL AND
CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN ENTERED 5-19-20**

Tentative Ruling:

Tentative for 5/20/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, May 20, 2020

Hearing Room 1675

3:00 PM

CONT... Aureliano Gonzalez and Juana Artega De Gonzalez Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

Aureliano Gonzalez

Represented By
Elena Steers

Juana Artega De Gonzalez

Represented By
Elena Steers
Elena Steers

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, May 20, 2020

Hearing Room

5B

3:00 PM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#30.00 Debtor's Motion to Avoid Junior On Principal Residence With CTF Asset Management, LLC
(cont'd from 3-18-20)

Docket 32

*** VACATED *** REASON: CONTINUED TO 7-15-20 AT 3:00 P.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON DEBTOR'S MOTION TO VALUE COLLATERAL AND
CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN ENTERED 5-19-20

Tentative Ruling:

Tentative for 5/20/20:
Continue per stipulation signed 5/19.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Continue for about 30 days to allow creditor to obtain its own appraisal.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic

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

Wednesday, May 20, 2020

Hearing Room 5B

3:00 PM

CONT... Aureliano Gonzalez and Juana Artega De Gonzalez
appearances may be arranged by calling (866) 582-6878.

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega 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
Courtroom 5B Calendar**

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**PORSCHE LEASING LTD. AND PORSCHE FINANCIAL SERVICES, INC.
Vs.
DEBTOR**

Docket 126

Tentative Ruling:

Tentative for 5/27/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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**

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 4-01-2020 per order approving stip. to cont. hrg entered 3-25-20)

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 51

Tentative Ruling:

Tentative for 5/27/20:

Continue for about 60 days. The debtor's principal defense is that there is equity and the property is necessary to a reorganization within the meaning of §362(d) (2). While it is true that debtor's burden is to prove that the property is necessary and that something is in prospect, it is movant's burden to prove no equity, and both elements are required. That is a very close question on this record. There is clearly not enough equity to provide "adequate protection" within the meaning of § 362(d)(1). Even if debtor's appraisal could be believed there might be, at best, only a razor thin slice above liens and costs of sale. So, the only solution is for debtor to confirm a plan and quickly. The court is willing to give a brief opportunity to do this, but if by the continued hearing there is not a plausible, confirmable plan on file, there will be no more time given. A word of caution: this does not mean some document that says "plan" on it, it means something that has been thought through and looks like it can actually be confirmed, and that will require supporting evidence. COVID-19 is a tragedy but in the end sympathy does not substitute for hard evidence, as that term does not appear in the statute.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Carole Ann Meikle

Chapter 11

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

Movant(s):

U.S. Bank National Association, not

Represented By
Greg P Campbell

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

#3.00 Motion by United States Trustee to Convert Case to Chapter 7 or Dismiss Pursuant to 11 U.S.C. Section 1112(b)
(cont'd from 4-08-20 per order entered 3-25-20)

Docket 31

Tentative Ruling:

Tentative for 5/27/20:

See #2. Debtor is coming to the end with this case. Catching up on missing MORS was the absolute requirement as without that there would be no more rope (and future lapses will not be tolerated). The debtor continues to assert the prospect of a turnaround but the hard facts are that we have not seen it yet and this is no longer a young case. As the UST argues, there is a substantial gap between proven income to date and what would be required on a monthly basis to service the mortgage, let alone anything else. We will continue about 60 days and in that time several things must happen: 1. a plan and disclosure statement must be on file; 2. that plan must be plausible and confirmable; 3. the disclosure statement must be accurate and complete, something approvable in the first pass (and not as a last minute bid to get more time); and 4. supporting evidence must be on file explaining how any of this actually works. Continued blaming of COVID-19 may be accurate but will not be availing, largely because this case was in trouble well before that became an issue. Continue approximately 60 days to coincide with #2.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Carole Ann Meikle

Chapter 11

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:

The court will determine whether, based on timely MORs, there is enough regular income to support a plan. Failure to demonstrate this ability, or any further delinquency on filing of MORs, will likely result in granting the motion.

Continue for 60-75 days per Trustee's suggestion.

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

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, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual
(cont'd from 4-08-20 per order entered 3-25-20)**

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
See #2 and 3.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:
Continue to coincide with UST's motion.

Tentative for 1/8/20:
Continue to January 22, 2020 to coincide with dismissal/conversion motion.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Carole Ann Meikle

Chapter 11

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:20-10181 Marco Brito

Chapter 13

#5.00 Motion for relief from the automatic sta REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR**

Docket 31

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY FILED 5-04-20**

Tentative Ruling:

- NONE LISTED -

Party Information

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, May 27, 2020

Hearing Room 5B

10:00 AM

8:20-10835 Trina Olson and Ryan Olson

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

BANK OF NEW YORK MELLON
Vs
DEBTORS

Docket 14

Tentative Ruling:

Tentative for 5/27/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Trina Olson

Represented By
Scott Dicus

Joint Debtor(s):

Ryan Olson

Represented By
Scott Dicus

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Trina Olson and Ryan Olson

Chapter 7

Movant(s):

The Bank of New York Mellon, f/k/a

Represented By
Kirsten Martinez

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, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-10568 Shanae Embry and Terrance Embry

Chapter 13

#7.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
RE: Insurance Proceeds RE: 2015 Ford Fusion, VIN: 3FA6P0SU2FR147294

CREDIT ACCEPTANCE CORPORATION
Vs
DEBTORS

Docket 77

Tentative Ruling:

Tentative for 5/27/20:

Any proceeds exceeding loan balance to be turned over to trustee.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Shanae Embry

Represented By
Lauren Rode

Joint Debtor(s):

Terrance Embry

Represented By
Lauren Rode

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Shanae Embry and Terrance Embry

Chapter 13

Movant(s):

Credit Acceptance Corporation

Represented By
Jennifer H Wang
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**

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:16-11969 Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

**#8.00 Motion For Adequate Protection Or In The Alternative, Relief from Automatic Stay
(cont'd from 4-29-20)
(rescheduled from 4-28-2020 at 10:30 a.m per court)**

JPMORGAN CHASE BANK
Vs.
DEBTORS

Docket 86

***** VACATED *** REASON: OFF CALENDAR - ORDER ON
STIPULATION RESOLVING MOTION FOR ADEQUATE PROTECTION
OR IN THE ALTERNATIVE, RELIEF FROM AUTOMATIC STAY
ENTERED 5-20-20**

Tentative Ruling:

Tentative for 4/29/20:

Have the parties reached an understanding, or can debtors provide an explanation consistent with the tentative?

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Wednesday, May 27, 2020

Hearing Room

5B

10:00 AM

CONT... Christopher E. Meyer and Rebecca Shoda-Meyer

Chapter 13

Tentative for 3/17/20:

This is the motion for relief of stay brought by JP Morgan Chase Bank. It is alternatively characterized as a request for adequate protection. The debtors are almost 4 years into their five-year plan. But for reasons never explained in the papers, the debtors have not paid property taxes on the subject property commonly known as 16317 Filbert Street, Fountain Valley, CA. for either 2018 or 2019. With penalties and fees according to the bank this is now a \$5942.16 obligation and climbing owed to the County. Both sides at various points characterize the question solely as one of "adequate protection." From this premise debtors argue that the bank can't complain since it is in first position securing about \$245,000 on a property worth, according to debtor, \$650,000. So, as the argument goes, the debtors could continue not paying their property taxes for several years to come and still not threaten, at least mathematically, to put the bank into an unsecured position even though by statute all liens are junior to County taxes. So, one supposes, under this argument the bank must simply lump it?

The court suggests many of the premises behind these arguments are wrong or wrong-headed. First, 11 U.S.C. §362(d)(1) provides relief of stay "for cause *including lack of adequate protection...*" In other words, "cause" can be based on things other than a narrow calculation of whether the complaining creditor is adequately protected. "Cause" can also go the behavior of the debtors including issues of bad faith. The court presumes that there is a covenant in the trust deed requiring the debtors to keep current on property taxes. The court also presumes that the confirmed plan required that debtors perform ongoing obligations under the deed of trust without modification. So, what we have in effect are both breaches of those covenants and *post-petition plan defaults*. That is consequently very much a "cause" question, and the possibly lackadaisical tone emanating from debtors on this point is very concerning. It should be well-known by now that this court takes a very dim view of post-confirmation plan

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

Wednesday, May 27, 2020

Hearing Room

5B

10:00 AM

CONT... **Christopher E. Meyer and Rebecca Shoda-Meyer** **Chapter 13**

defaults. Moreover, relief of stay on account of a Chapter 13 plan default may just the sort of situation for which the deliberately broad and flexible "for cause" provision was designed. See *In re Carona*, 254 B.R. 364, 367 (Bankr. S.D. Tex. 2000).

Of course, the court would prefer debtors complete their plan and keep their home. A large step in that direction, however, will have to be an attitude adjustment and recognition that remedial steps must be taken immediately as that goal is in some jeopardy. The court will hear argument on the points raised.

No tentative

Party Information

Debtor(s):

Christopher E. Meyer

Represented By
Joseph A Weber

Joint Debtor(s):

Rebecca Shoda-Meyer

Represented By
Joseph A Weber

Movant(s):

JPMORGAN CHASE BANK,

Represented By
Caryn Barron
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**

Wednesday, May 27, 2020

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

#9.00 STATUS CONFERENCE RE: Third Amended Complaint for 91) Intentional Interference with Contractual Relations; (2) Turnover; (3) Avoidance of Pre-Petition Fraudulent Transfers; (4) Avoidance of Unauthorized Post-Petition Transfers; (5) Recovery of Pre-Petition Fraudulent Transfers and Unauthorized Post-Petition Transfers; (6) Breach of Fiduciary Duty (7) Aiding and Abetting Breach of Fiduciary Duty and (8) Declaratory Relief.
(con't from 2-27-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)

Docket 83

***** VACATED *** REASON: CONTINUED TO 8-27-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 5-14-20**

Tentative Ruling:

Tentative for 2/27/20:

Status conference continued to May 28, 2020 at 10:00AM. Looks like this case is drifting. Continue one last time.

Tentative for 11/7/19:

See #15 at 11:00AM. Are parties prepared to set deadlines on complaint issues?

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.

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

Wednesday, May 27, 2020

Hearing Room

5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - 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

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc. Chapter 7

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
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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

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

Wednesday, May 27, 2020

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

#10.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Fraudulent Transfers or, in the Alternative Avoidance and Recovery of Preferential Transfers
(cont'd from 2-27-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-27-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 5-14-20**

Tentative Ruling:

Tentative for 2/27/20:

Status conference continued to May 28, 2020 at 10:00AM. Some of these cases appear to be drifting. Continue one last time.

Tentative for 12/5/19:

Why no status report?

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 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**

Wednesday, May 27, 2020

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

**#11.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of
Unauthorized Post-Petition Transfer
(con't from 2-20-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 5/27/20:

The court's order to mediate was not a suggestion. As the court recollects, the amount in dispute is now down to \$5800, is that right? If so, it is madness not to settle this. Since the parties seem not to be cooperating (neither side's position impresses), if a mediator is not agreed within ten days then each side to select a mediator, and those two will choose a single third person to serve as actual mediator for them from the panel. Mediation may occur remotely, but is to be completed within 90 days. The conference will be continued but if a mediation does not occur as ordered within the time allowed you may expect sanctions which could include striking of pleadings. Continue approximately 120 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

Tentative for 2/20/20:
See #3.

Deadline for completing discovery: May 1, 2020
Last date for filing pre-trial motions: May 25, 2020
Pre-trial conference on:
Joint pre-trial order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by May 1, 2020.

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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**

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01023 Avery v. Shen Liu

**#12.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of
Unauthorized Post-Petition Transfer
(con't from 2-20-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
Same as #11.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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
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
Courtroom 5B Calendar**

Wednesday, May 27, 2020

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

#13.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 2-20-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE OF DEFENDANTS JP MORGAN CHASE AND SHU SHEN LUI FILED 5-15-20**

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon
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**

Wednesday, May 27, 2020

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

**#14.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers
(con't from 2-20-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
Same as #11 and 12.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

Tentative for 11/7/19:

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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
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**

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01026 Avery v. Citibank et al

**#15.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers
(con't from 2-20-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE OF
DEFENDANTS CITIBANK AND SHU SHEN LUI FILED 5-15-20**

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon
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**

Wednesday, May 27, 2020

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

**#16.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers
(con't from 2-20-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
Same as #11, 12, 14.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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

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**

Wednesday, May 27, 2020

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

#17.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 2-20-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE OF
DEFENDANTS CHARLES C.H. WU & ASSOCIATES, APC AND SHU
SHEN LUI FILED 5-15-20**

Tentative Ruling:

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

Debtor(s):

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon
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**

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

Adv#: 8:19-01197 Commonwealth Land Title Insurance Company v. Nguyen

#18.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under 11 USC Section 523 (rescheduled from 4-9-2020 per court) (cont'd from 4-08-20)

Docket 1

Tentative Ruling:

Tentative for 5/27/20:

See #4.1 at 11:00am - motion for default judgment.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

What is the status? Has a prove-up been done? Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Stephen Nguyen

Chapter 7

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 12/19/19:
Schedule prove up?

Party Information

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-13860 Eric Botelho

Chapter 7

Adv#: 8:20-01003 American Express National Bank v. Botelho et al

#19.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
(cont'd from 3-26-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR DEFAULT JUDGMENT - JUDGMENT SHALL BE IN
FAVOR OF PLAINTIFF ENTERED 4-16-20**

Tentative Ruling:

Tentative for 3/26/20:

Status conference continued to May 28, 2020 at 10:00AM with expectation that default judgment will be obtained in the meantime.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Eric Botelho

Represented By
Gary Polston

Defendant(s):

Eric Botelho

Pro Se

Margo Botelho

Pro Se

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Eric Botelho

Chapter 7

Joint Debtor(s):

Margo Botelho

Represented By
Gary Polston

Plaintiff(s):

American Express National Bank

Represented By
Dennis C. Winters

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, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Global Approach, Inc. et al v. Rock Star Beverly Hills LLC et al

#20.00 STATUS CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(cont'd from 4-08-20)

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

If the court understands correctly, it is Plaintiff's wish to remain in the Bankruptcy Court and proceed to default and default prove-up. There appears to be no reason not to do this since, unlike contested matters where the court is deferential to sister courts, especially when the proceedings are well-advanced and other non-debtor parties are actively involved, none of those issues pertain here. But there is a large standing issue. Such matters as these belong not to

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT...

Igor Shabanets

Chapter 7

the prosecuting plaintiff alone but to the estate once a bankruptcy is filed. Consequently, the court expects the Plaintiff to contact the Trustee and make suitable arrangements about matters including: (1) continued representation and employment of counsel; (2) substitution of real party in interest and (3) language of the default judgment, findings and evidence to be submitted in support. *The OSC is satisfied and discharged, and the matter will be continued about 60 days as a status conference.*

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:

Why should the court not remand? The court is also interested to know if the Chapter 7 Trustee intends to intervene as real party in interest. Continue for these answers.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

Plaintiff(s):

Global Approach, Inc.

Represented By
Alan W Forsley
Bobby Benjy

Remares Global, LLC

Represented By
Alan W Forsley
Bobby Benjy

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, May 27, 2020

Hearing Room 5B

10:00 AM

8:20-10079 James G Andritch, II

Chapter 7

Adv#: 8:20-01021 Andritch, II v. Internal Revenue Service

#21.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Tax Liability (rescheduled from 5-28-2020 at 10:00 a.m. per court)

Docket 1

Tentative Ruling:

Tentative for 5/27/20:

Status? See IRS brief regarding proper service issue. Continue for issuance of alias summons?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

James G Andritch II

Represented By
Bruce A Boice

Defendant(s):

Internal Revenue Service

Pro Se

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... James G Andritch, II

Chapter 7

Plaintiff(s):

James G Andritch II

Represented By
Bruce A Boice

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, May 27, 2020

Hearing Room 5B

10:00 AM

8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

**#22.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 11-06-19)**

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
Status? In view of sale is there any reason to keep this on calendar?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:
Continue status conference about 90 days at which time the court expects a decision about whether there is any purpose served by remaining in Ch. 11.

Tentative for 11/6/19:
Deadline for filing plan and disclosure statement or motion to sell substantially all assets: February 1, 2020.

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Barley Forge Brewing Company, LLC Chapter 11

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):

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, May 27, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#23.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Based On Fraud And Objecting To Discharge Of Debtors (cont'd from 3-12-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-30-20 AT 10:00 A.M.
PER ORDER RE: STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE HEARING ENTERED 5-22-20**

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.

Tentative for 6/6/19:
See # 23 & 24 - Motions to Dismiss

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

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

Wednesday, May 27, 2020

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

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

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#1.00 Application To Amend Or Expand Employment Of Ringstad & Sanders LLP, As
General Bankruptcy Counsel For Chapter 7 Trustee, Karen Sue Naylor

Docket 2757

Tentative Ruling:

Tentative for 5/27/20:

The opposing parties apparently advance three arguments, none of which is compelling.

1. The Firm has failed to maintain ongoing disclosures, particularly its relationship with Trustee.
2. Trustee has not and cannot demonstrate the cause required to hire her own law firm.
3. The Firm is not entitled to fees for trustee services

The first argument is not compelling because, as explained in the Reply, Trustee and the Firm have disclosed that Trustee is a partner in the Firm, and that fact has been fully disclosed in the Application, and on multiple occasions in this case since she joined the Firm on April 1, 2018. Specifically, Trustee points out that such a disclosure was made explicitly in the Sanders declaration attached to the application. The relationship is again established in Exhibit 2 of the Application, the Firm profile. Several fee applications in this case have also disclosed the relationship. Shenson received copies of the applications. In short, the Trustee's relationship with the Firm is common knowledge amongst the parties. This allegation is meritless.

The second argument is also not compelling. Again, the Reply effectively rebuts the allegation that Trustee has failed to demonstrate cause to hire her own firm as counsel. On page 8 of the Application, the Trustee discussed the factors demonstrating "cause" as outlined in *In re Butler Investments, Inc.*, 114 B.R. 695 (Bankr.C.D.Cal.1990), which include as examples: (1) the estate's assets consist primarily of causes of action such as preferences or fraudulent conveyances; (2) there is little legal work to be done; (3) there is an immediate

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

need for legal work to be done; or (4) the trustee can demonstrate that the appointment will result in a substantial reduction of costs to the estate. *Id.* At 699 fn.1. Although the Application does not involve an exhaustive demonstration that the Firm can meet the *Butler* factors, the Application does state that it is intimately familiar with the case and there will be no "learning curve," which will reduce costs to the estate, which should be obvious. The Reply expands on this point, but the court should be satisfied that the Trustee has demonstrated sufficient cause consistent with *Butler*.

Finally, the argument that the Firm should not receive fees for Trustee work is also not compelling. As noted in the Reply, the opposition appears to take issue with language in the Application to effect that any and all fees sought will be subject to the court's approval. In any case, as Trustee notes, what constitutes "trustee services" can vary based upon the facts and circumstances of a specific case. Trustee also notes that the character of services sometimes cannot be determined until after the services are rendered. Apparently, the point of this portion of the opposition is to imply some kind of conflict of interest. But, as Trustee notes, all fees are subject to court approval, which should be considered a sufficient safeguard for the opposing parties.

In sum, none of the arguments advanced by the opposing parties hold much water. Trustee has sufficiently demonstrated cause to hire the Firm and/or expand the scope of its representation.

Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
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, May 27, 2020

Hearing Room 5B

11:00 AM

8:17-12900 Harv Wyman

Chapter 7

Adv#: 8:19-01171 NAYLOR v. THE EVERGREEN ADVANTAGE, LLC et al

#2.00 Motion to Dismiss Complaint Under Rule 12(b)(6)

Docket 66

***** VACATED *** REASON: CONTINUED TO 6-25-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION TO DISMISS COMPLAINT UNDER RULE 12(B)(6)
ENTERED 5-12-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harv Wyman

Represented By
Thomas J Polis

Defendant(s):

THE EVERGREEN ADVANTAGE,

Represented By
Zi Chao Lin

THE EVERGREEN ADVANTAGE

Represented By
Alexa P Stephenson

RUFFIN ROAD VENTURE LOT 6

Pro Se

BOMOR ENTERPRISES, LLC

Represented By
D Edward Hays
Tinho Mang

Joint Debtor(s):

Kim M. Wyman

Represented By
Thomas J Polis

Plaintiff(s):

KAREN SUE NAYLOR

Represented By

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

CONT... Harv Wyman

William Malcolm

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
Christina J Khil
Arturo M Cisneros

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:18-13362 Shelley M Spear

Chapter 7

#3.00 Motion to Dismiss Debtor Chapter 7 Proceeding

Docket 87

Tentative Ruling:

Tentative for 5/27/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Shelley M Spear

Represented By
Sunita N Sood

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, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-13909 Christopher Holden and Ninpapha Niangnouansy

Chapter 7

#3.10 Motion To Reopen Closed Case; Motion To Vacate Order And Enter Discharge

Docket 47

Tentative Ruling:

Tentative for 5/27/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Christopher Holden

Represented By
Walter David Channels

Joint Debtor(s):

Ninpapha Niangnouansy

Represented By
Walter David Channels

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, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-14600 Consumer Financial Alliance LLC

Chapter 7

#4.00 Application to Employ Krystina T. Tran as Special Counsel To Chapter 7 Trustee

Docket 25

***** VACATED *** REASON: CONTINUED TO 6-10-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
OF CHAPTER 7 TRUSTEE'S APPLICATION TO EMPLOY ENTERED 5-
26-20**

Tentative Ruling:

Party Information

Debtor(s):

Consumer Financial Alliance LLC

Represented By
Krystina T Tran

Trustee(s):

Thomas H Casey (TR)

Represented By
Krystina T Tran

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

Adv#: 8:19-01197 Commonwealth Land Title Insurance Company v. Nguyen

#4.10 Motion For Default Judgment Under LBR 7055-1

Docket 17

Tentative Ruling:

Tentative for 5/27/20:
Grant.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

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

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

CONT... Stephen Nguyen

Chapter 7

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, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

#5.00 Final Fee Application For Compensation For Period: 9/9/2019 to 4/6/2020:

MICHAEL JONES, DEBTOR'S ATTORNEY

Fee: \$43,610.00

Expenses: \$1,029.95

Docket 87

Tentative Ruling:

Tentative for 5/27/20:

Grant the sum of \$42,425 absent better explanation (see below).

On page 15 of the application, Mr. Jones appears to sum up the total hours worked as follows:

Michael Jones – Blended Rate: \$550 – Total Hours – 74.3 – Total Fees - \$40,865
Sara Tidd – Blended Rate: \$400 – Total Hours – 3.9 – Total Fees - \$1,560

Total fees would be \$42,425.00 The application requests \$43,610.00 (as shown in Ex. A), a nearly \$1,200 difference. It is not clear where this discrepancy comes from.

A declaration by the Debtor in support of the fee application is expected.

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Please be advised that CourtCall has announced reduced fees for attorneys to

**United States Bankruptcy Court
Central District of California
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CONT... Ralph Maxwell Burnett, III and Shelley Lynn Burnett Chapter 11

use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
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Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-13493 Ralph Maxwell Burnett, III

Chapter 11

Adv#: 8:19-01230 Ross v. Burnett, III et al

#6.00 Motion To Withdraw As Counsel

Docket 31

Tentative Ruling:

Tentative for 5/27/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Ralph Maxwell Burnett III

Represented By
Michael Jones

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, May 27, 2020

Hearing Room 5B

11:00 AM

CONT... Ralph Maxwell Burnett, III

Chapter 11

Joint Debtor(s):

Shelley Lynn Burnett

Represented By
Michael Jones
Sara Tidd

Plaintiff(s):

Richard Ross

Represented By
Thomas J Polis

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

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

#7.00 STATIS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 2-05-19)
(cont'd from 4-08-20)

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
See #8 and 9.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:
No status report filed? See #12 and #13. Continue to coincide with confirmation hearing. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

CONT... Rosemaria Geraldine Altieri Chapter 11

use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/5/20:
Continue status conference. Continue approximately 60 days to allow analysis of plan and disclosure statement due 2/28/20.

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.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#8.00 Motion to Use Cash Collateral
(cont'd from 2-05-19)
(cont'd from 4-08-20)**

Docket 5

Tentative Ruling:

Tentative for 5/27/20:
see #9. Continue on same terms one final time.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:
Continue on same terms pending confirmation hearing. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, May 27, 2020

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11:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/5/20:

Continue use on same terms pending continued status conference.

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?

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By

Misty A Perry Isaacson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#9.00 Confirmation Of Chapter 11 Plan
(set from 4-08-20 discl stmt hrg)**

Docket 66

Tentative Ruling:

Tentative for 5/27/20:

This is the hearing on confirmation of debtor's plan. It is opposed in objections filed by two creditors.

A. Bryson

The first objection comes from judgment creditor from Class 2E, Stephanie Bryson ("Bryson"). Bryson obtained a judgment against Debtor in the amount of \$270,658.85. Bryson has liens on two properties located in Massachusetts, the Chandler property and the Adams property. The Chandler property was valued at \$775,000 (though Bryson values it at \$795,000). The Adams property was valued at \$978,300 (Bryson values it at \$1,240,000).

The plan proposes to pay off debt of \$330,386.91 (as of 10/22/19) over a period of 180 months, with monthly "interest only" payments of \$1,376.61, then a balloon payment of \$330,386.91 at the end of the plan.

Bryson argues that the plan does not satisfy the best interest of creditors test. Bryson does not believe that the Debtor's liquidation analysis is accurate, due partly to the undervaluing of the encumbered properties. If Bryson's fair market valuations are used instead of Debtor's, then the result is a net positive instead of negative. Bryson concedes that after administrative costs were factored in a chapter 7 liquidation there would still be nothing left for unsecured creditors, whereas the current plan provides for at least some recovery for unsecured creditors. Despite this fact, Bryson argues that the plan still cannot be

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11:00 AM

CONT... **Rosemaria Geraldine Altieri**
considered fair and equitable.

Chapter 11

Specifically, Bryson argues that the 5% interest rate contemplated in the plan is not adequate to account for the risks involved. Bryson is not a lender and her Massachusetts judgment accrues interest at 12% per year. Bryson asserts that she could foreclose on the Massachusetts properties, which would pay the judgment debt in full. Bryson asserts that the plan also has feasibility issues, and the interest rate must be adjusted to account for that risk.

Bryson asserts that the plan relies on rental income from two properties in Massachusetts. Any unplanned or prolonged vacancy throws the plan into doubt. Furthermore, Bryson asserts that Debtor's financial history suggests that her projected income is optimistic to say the least. The properties are also old and may need repairs over the life of the plan. Those repairs could come at significant cost, which again, would jeopardize the plan. The supplement to the Bryson opposition states that Debtor is including a \$16,000 annual bonus from her employer, Clean Energy. However, it appears that the bonus will be in the form of stock, not cash. Thus, Bryson concludes that the plan is simply not feasible and should not be confirmed. Not raised by Bryson, but of concern to the court, is what happens at the end of 180 months on the balloon? One imagines that the debtor will either refinance or sell, but the prospect of so doing should at least be explained. Interest-only, non-amortizing lien treatments are inherently riskier than fully amortizing. This is because the creditor is never put in a position of comfort on its principal, but always hangs on the precipice. There may be a further complication here in that Massachusetts rate of interest on judgment liens is reported to be 12%, which means that the balance will actually increase over time, unless it is intended that the cramdown rate supplant the state judgment rate. That point needs clarification and briefing.

This is not inherently unconfirmable, but the fundamental precept is that the risks imposed must be fully paid. In the court's view, 5% is too low to accomplish "present value" under §1129(b)(2)(A) considering this point and that

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CONT... Rosemaria Geraldine Altieri

Chapter 11

Bryson appears to be in second position, with little or no cushion. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Debtor argues for the prime plus approach found in *Till* and argues that *North Valley Mall* is distinguishable. But her argument is not convincing. What is the principled difference between a judgment lien and a defaulted loan? They are both 'allowed secured claims' and that is what the Code requires be given present value if paid over time. Debtor confuses resort to market data to help analyze what is present value (an economic concept informed by data) with the fact that most data available happens to originate in the loan marketplace. That is because lenders consult varied data when deciding whether to extend credit, and many factors such as collateral value and creditworthiness go into the analysis. That is a process done before the fact. But that does not change the fact that both are secured claims being paid over time so their origin seems immaterial *after the fact* where the court in cramdown analysis is asked to make a determination of factors in situations where no real market exists. Even if the court could be persuaded that the *Till* approach (which was after all about a truck loan and seemingly even less relevant) were correct, a 1.75% adjustment is still way too low.

B. U.S. Bank National Association

The real property that is the subject of this Objection is located at 33 Chandler Street, Newton, MA 02458 (the "Property"). Creditor holds a security interest in the Property as evidenced by a Note and Mortgage executed by the Debtor. Said Note and Mortgage are attached to Creditor's proof of claim (the "Proof of Claim") which was filed in the instant case as Claim No. 5-1. The Proof of Claim provides for a secured claim in the amount of \$590,127.29. This amount has increased since the petition date as interest has accrued and Creditor has made post-petition escrow advances to protect its interest in the Property. The current payoff balance for Creditor's claim through June 10, 2020 is

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CONT... Rosemaria Geraldine Altieri Chapter 11

\$617,465.04. Creditor's claim is treated in the Plan under Class "2B." The Plan provides that the Debtor will pay Creditor's claim the amount of \$590,127.29, over 360 months (30 years) at 4.625% interest, with equal monthly payments of \$3,034.08.

The Plan fails to provide for maintenance of property insurance and timely payment of property taxes. The Plan should specify whether Debtors intend to maintain property insurance and tax payments directly or through establishment of an escrow account with Creditor. Creditor has advanced approximately \$7,597.52 for post-petition property taxes on account of the Property. The Plan does not provide for reimbursing Creditor for such advances which were made post-petition for the benefit of the estate. Such advances qualify as administrative expenses and must be cured on or before the effective date of the plan.

The Plan indicates that the value of the Property is \$775,000.00. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. The plan provides for a total secured claim in the reduced amount of \$590,127.29. As the plan fails to provide for the full amount of Creditor's secured claim, Debtor's Plan cannot be confirmed as is, and the portion that is payable as an administrative claim must be dealt with.

C. Conclusion

The objections raise some good points regarding feasibility. According to Bryson, Debtor's own financial data demonstrate that she will not be able to make good on the plan payments. This plan appears to have a very (perhaps overly) optimistic outlook on Debtor's finances. Further, expenditures that may be necessary are not addressed at all, like insurance, maintenance, and the fact that there may be a \$7597.52 administrative claim.

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CONT...

Rosemaria Geraldine Altieri

Chapter 11

Debtor points out that Bryson has not provided any analysis as to what the appropriate interest rate would be. Debtor also points out that under the plan, unsecured creditors get at least some recovery, whereas in a liquidation, they would receive nothing. While, of course, the court wants unsecured creditors to get something, this does not substitute for the fact that it is debtor's burden to prove not only feasibility, but that cramdown treatment is providing the present value of the objecting secured claims and that this plan is better than liquidation. This has not been done. Furthermore, Debtor asserts that the First Amended Plan provides that all secured creditors encumbering the Rental Properties will receive deferred cash payments totaling the allowed amount of their claims while retaining their liens on the Rental Properties. But this assertion is devoid of analysis and, on a true present value basis, probably wrong. As Debtor's plan seems to be premised on everything going as planned over the 15 (or even thirty) years of this Chapter 11 plan, with little or no wiggle room, and while not even apparently dealing with all likely expenses, the court requires Debtor to answer Bryson's concerns about feasibility. Given the current economic climate, Debtor should account for the realistic probability of sustained occupancy in the rental properties as well as her own employment prospects.

No tentative. Continue for approximately 30 days to afford one final opportunity to fill in the gaps.

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11:00 AM

CONT... **Rosemaria Geraldine Altieri**
during the hearing.

Chapter 11

Tentative for 4/8/20:

The purpose of a disclosure statement is "to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan." Duff v. U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996). "Adequate information" is defined under 11 U.S.C. Sec. 1125(a)(1) as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interest of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan."

Bryson's objections notwithstanding (though feasibility seems questionable), the DS appears to provide adequate information. It is also worth noting that the DS has not drawn any other opposition. The plan may ultimately not be confirmable if feasibility proves too speculative, as it very well might be given the current economic climate, or if cramdown is attempted and the value of the rental properties is too low as Bryson has alleged, suggesting that creditors will do better in a liquidation (the so-called best interest of creditors test). Debtor will have the burden on these issues in order to achieve confirmation, but at this stage, the DS does not appear deficient from an *information* standpoint, especially with the detailed risk factors analysis.

Grant. Set confirmation date and deadlines.

Appearance is optional.

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11:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-14307 Roadking Trucking, LLC

Chapter 11

**#10.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual LLC
(cont'd from 3-25-20)**

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
See #11 and 12.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/25/20:
See #10.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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11:00 AM

CONT... Roadking Trucking, LLC
represented litigants through April 30, 2020.

Chapter 11

Tentative for 3/12/20:
Why no status report?

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

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-14307 Roadking Trucking, LLC

Chapter 11

#11.00 Motion for Order: (1) Approving Sale of Substantially All Property of the Estate Subject to Overbidding Pursuant to 11 U.S.C. 363(b); (2) Approving Sale Free and Clear of Superior Drivers' Interests and Liens Pursuant to 11 U.S.C. 363(f); and (3) Finding Buyers Are Good Faith Purchasers Pursuant to 11 U.S.C. 363(m)
(con't from 3-25-20)

Docket 55

Tentative Ruling:

Tentative for 5/27/20:

Does the court understand correctly that this motion to sell and the motion to dismiss (#12) are unopposed? If so, grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/25/20:

This is Debtor, Roadking Trucking, LLC's ("Debtor's") motion to (1) approve sale of substantially all property of the estate subject to overbidding pursuant to 11 U.S.C. § 363(b); (2) approve the sale free and clear of Superior

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11:00 AM

CONT... **Roadking Trucking, LLC**

Chapter 11

Drivers' interests and liens pursuant to 11 U.S.C. § 363(f); and (3) finding buyers are good faith purchasers pursuant to 11 U.S.C. § 363(m). The motion is opposed by creditors, Bibby Transportation Finance ("Bibby"), and Superior Drivers, Inc. ("Superior Drivers"), which is made up of several individual creditors.

1. **Terms of the sale** are as follows:

Proposed Buyers: RoadKing Trucking West Coast, LLC and RoadKing Logistics, Inc. ("Buyers"). There is an ownership interest in one or both entities of the current principal, Michael Noles;

Property to Be Sold: All assets, including (1) accounts receivable, (2) office furniture and fixtures, and (3) goodwill and other intangibles, but excluding cash in DIP accounts ("Assets");

Sale Price: \$69,000

Treatment of Liens and Interests:

Bibby Transportation Finance: Sale is subject to undisputed senior lien of Bibby Transportation Finance, Inc.;

Superior Drivers: Sale is free and clear of disputed junior liens and interests of the Superior Drivers;

Overbidding: Proposed sale is subject to overbidding. Minimum initial overbid must be at least \$69,500.

Tax Consequences: No adverse tax consequences are anticipated from the sale

Section 363(b) provides that after notice and a hearing, a trustee may sell

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CONT... **Roadking Trucking, LLC**

Chapter 11

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.

2. Bibby's Opposition

Bibby's main opposition to this motion stems from Bibby's concerns that Debtor intends to sell all of its accounts receivable to the successful buyer even though there is already a true factoring agreement in place that vests Bibby the rights to Debtor's accounts receivable. Bibby also has a first and prior lien as to substantially all of Debtor's assets, which cross-collateralizes Debtor's pre-petition and post-petition obligations to the factor. Bibby is concerned that through the Sale Motion, Debtor proposes to transfer all of its assets, without satisfaction of the obligations due Bibby. The Sale Motion appears to contemplate a transfer of the estate's assets subject to Bibby's priority lien, but that is left unclear.

In response to these concerns, Debtor asserts and acknowledges that it does not consider the accounts receivable already factored and sold to Bibby to be property of Debtor's bankruptcy estate. Therefore, Debtor asserts that it does not intend or seek court approval to re-sell such accounts to the Buyers under the Motion. Instead, the Motion contemplates that Debtor's business will be sold as a

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going concern and that the sale will close not later than 120 days after entry of a court order approving the sale. (The 120-day escrow period is required for the Buyers to obtain all regulatory approvals, licenses, permits, insurance, etc. before continuing operations.) To that end, Debtor will propose a sale order that expressly excludes all cash and accounts receivable from the property sold, which apparently resolves Bibby's objection.

Regarding Bibby's concern over its lien, Debtor argues that the concern is due to an overstatement of the relief requested in the Motion, which seeks to sell the Assets subject to Bibby's lien. Debtor believes that Bibby is over secured by (1) its continued collection on the factored accounts from SeaLogix; (2) the prepetition and post-petition reserve accounts (which totaled \$24,924 as of February 29, 2020), and (3) its senior lien against Debtor's bankruptcy estate (including the sale proceeds). Thus, per its request, Debtor states that it will work with Bibby "on a plan for satisfaction of the remaining obligations under the [DIP Financing Order] in connection with the proposed sale." Debtor expects Bibby to continue factoring Debtor's accounts receivable until the sale closing. Debtor will fully cooperate with Bibby towards the ending of the factoring relationship and ensure that Bibby receives full payment of its secured claim. But what the court is supposed to do with that is left very unclear.

3. Superior Driver's Opposition

Superior Drivers essentially object on the basis that the sale contemplated by the motion is conclusory and unfair because it would sell off all of the assets of Debtor to two companies affiliated with Debtor (or its principal) but leave Debtor and its principals free to conduct the business with no regard for or chance to vote by the creditors, concluding that the motion should not be approved. As an alternative, Superior Drivers requests that a ruling on the motion be postponed until Debtor proposes a plan of reorganization. Superior Drivers also points out that each of the Creditors has each filed a Proof of Claim based

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on their judgment collectively for over \$3 million in unpaid wages, unreimbursed expenses, penalties and interest against Debtor as the successor in interest Superior Dispatch, Inc. One of the proposed buyers is co-owned by Michael Noles, the Debtor's owner and the son of Melinda Melgar, who co-owned Superior Dispatch, Inc. with her husband Cesar Melgar. Superior Dispatch, Inc. is the company that owed the Creditors \$3 million in unpaid wages etc., which is the entity that that the Debtor was found at trial to be successor in interest.

As argued by Debtor, it is generally well settled, however, that § 363 sales may be conducted prior to plan confirmation so long as there is a good business reason for the sale. See e.g., *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). "Neither the Code nor the caselaw ... requires waiting for the plan confirmation process to take its course when the inevitable consequence would be a liquidation. Bankruptcy courts have the power to authorize sales of assets at a time where there still is value to preserve—to prevent the death of the patient on the operating table." *In re GMC*, 407 B.R. 463, 474 (Bankr. S.D.N.Y. 2009).

Section 363 provides that a trustee or debtor in possession "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). "Notably, section 363 has no carveouts from its grant of authority when applied in cases under chapter 11 for dispositions of property exceeding any particular size, or where the property is of such importance that it should alternatively be disposed of under a plan. Nor does any other provision of the Code so provide." *GMC*, 407 B.R. at 486. Instead, "section 363 sales of major assets may be effected before confirmation." *Id.* at 488; see also *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 37 n.2 (2008) ("Chapter 11 bankruptcy proceedings ordinarily culminate in the confirmation of a reorganization plan. But in some cases, as here, a debtor sells all or substantially all its assets under § 363(b)(1) before seeking or receiving plan confirmation.").

Further, when determining whether there is a good business reason for a

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§363(b) sale before confirmation, a bankruptcy court should consider all of the "salient factors pertaining to the proceeding," including:

- (a) the proportionate value of the asset to the estate as a whole;
- (b) the amount of elapsed time since the filing;
- (c) the likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- (d) the effect of the proposed disposition on future plans of reorganization;
- (e) the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property;
- (f) which of the alternatives of use, sale or lease the proposal envisions; and "most importantly perhaps,"
- (g) whether the asset is increasing or decreasing in value. *GMC*, 407 B.R. at 490 (citing *Lionel*, 722 F.2d at 1071).

Importantly, however, the bankruptcy court must also consider if those opposing the sale produced some evidence that the sale was not justified. *Id.*; see also *Lionel*, 722 F.2d at 1071 ("[W]e must consider whether [sale opponents] produced evidence before the bankruptcy court that such sale was not justified. While a debtor applying under § 363(b) carries the burden of demonstrating that a use, sale or lease out of the ordinary course of business will aid the debtor's reorganization, an objectant ... is required to produce some evidence respecting its objections.").

Here, Debtor argues that abundant evidence of sound business justification exists to approve this sale, and Superior Drivers has not come forward with any contrary evidence. For example, Debtor asserts that its proposed sale of office furniture, equipment and fixtures will be sold above market value for a total of \$69,000. Debtor also asserts that since the petition date, Debtor has been operating on essentially a break-even basis, which makes a sale preferable to a reorganization. Debtor also foresees several obstacles

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toward a reorganization including: (1) the additional administrative expenses incurred to propose and confirm a chapter 11 plan (which would impede payment to other creditors), (2) operational uncertainties given the changing regulatory landscape described in the Motion (i.e., AB-5), and (3) certain obstacles to plan confirmation such as obtaining a consenting class of impaired creditors. Debtor further states that after the sale is consummated, it intends to convert its case to Chapter 7. The appointed chapter 7 trustee will have the discretion as to how proceeds of the sale will be distributed to creditors. Thus, Debtor argues that Superior Drivers' assertion that Debtor is attempting a *sub rosa* plan is simply incorrect. Debtor does concede that it has not yet obtained an appraisal on its assets but asserts that this should be overlooked because the sale is subject to overbidding and that, so far anyway, it has been unable to garner any interest in bidding aside from the proposed buyers despite advertisement.

Debtor also asserts that the assets it proposes to sell are subject to diminishing value due to certain regulatory changes. For example, Debtor asserts that AB-5 may soon prevent Debtor, a motor freight carrier, from using subcontractor drivers to haul its loads. If the enforcement stay of AB-5 is lifted, then Debtor could not operate without hiring the drivers as employees, which would fundamentally change the structure of Debtor's current business model and may require it to shut down. This, together with the uncertainty caused by the current coronavirus pandemic adds additional urgency to the sale. Debtor argues that the sooner the sale is approved and completed, the sooner there will be payouts to creditors. These considerations, Debtor argues, demonstrate a sound business justification for approving the sale.

The court agrees that there appears to be a sound business justification for approving the sale. However, the court is not certain about whether the buyers, as insiders of Debtor, are good faith purchasers. The motion is quite vague and mostly conclusory as to why Buyers should be approved as good faith

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purchasers, especially given the concerns voiced by Superior Drivers. On the other hand, a sale is likely the best chance to get something to these creditors, whereas the prospects of a successful reorganization, given the current economic climate, are highly speculative at best, non-existent at worst. Moreover, the price is so modest that, after administrative and priority claims, it seems unlikely that general unsecured creditors will get anything. Debtor also asserts that Superior Drivers' ORAP lien is subject to *bona fide* dispute pursuant to a present adversary proceeding (8:19-ap-01223). In that case, Debtor is seeking to avoid the ORAP lien and Assignment Order as preferential transfers. There is a motion for summary judgment that is set for hearing on April 1, 2020 at 11:00 a.m.

4. Conclusion

A few points emerge clearly. First, this motion represents a big ask, i.e. a very small price, unsupported by an appraisal, to entities affiliated with an insider, of substantially all the assets, which will likely result in little or no recovery by the unsecured creditors who are objecting. The resulting question is, is there an alternative? There might well not be, realistically. It is also clear that this case does not belong in Chapter 11 as it has been on its deathbed for months now, and its prospects for reorganization are nil. Debtor admits as much. So, what to do? The court will convert the case to Chapter 7 *sua sponte* and have the Chapter 7 trustee evaluate the advisability of the sale before a continued hearing on the sale.

Convert to Chapter 7 and continue sale hearing for 30 days to allow a review by the Chapter 7 trustee. An operating order pending the sale may be obtained upon request. The appointed trustee is requested to provide a short evaluation report on the sale as soon as possible before the hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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appearances are mandatory on all matters other than evidentiary hearings.
Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

Movant(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

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8:19-14307 Roadking Trucking, LLC

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#12.00 Motion for Order: (1) Approving Settlement Agreement With Superior Drivers Pursuant to Bankruptcy Rule 9019 and 11 USC 105(a), (2) Dismissing The Bankruptcy Case Pursuant to 11 USC 1112(b), And (3) Preserving the Avoidance of the ORAP Lien And Assignment Order Upon Dismissal of the Bankruptcy Case Pursuant to 11 USC 349(b)
(OST Signed 5-14-20)

Docket 69

Tentative Ruling:

Tentative for 5/27/20:
If unopposed, grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

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8:19-14531 160 Shorewood Drive LLC

Chapter 11

#13.00 Motion of Debtor to Voluntarily Dismiss Chapter 11 Proceeding Pursuant to 11 U.S.C. Section 1112(b) and FRBP Section 1017 and 9014

Docket 35

Tentative Ruling:

Tentative for 5/27/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

160 Shorewood Drive LLC

Represented By
Michael R Totaro

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8:20-10295 Katangian Vail Avenue Property Investments, LLC a

Chapter 11

#14.00 Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f)
Re Real Property located at 724 S. Vail Ave., Montebello, CA 90460

Docket 40

Tentative Ruling:

Tentative for 5/27/20:

Grant, but see title questions raised in buyer's brief.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Katangian Vail Avenue Property

Represented By
Michael R Totaro

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8:20-11154 1141 South Taylor Avenue, LLC

Chapter 11

#15.00 Status Conference RE: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

Tentative Ruling:

Tentative for 5/27/20:
see #16.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

1141 South Taylor Avenue, LLC

Represented By
Michael R Totaro

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8:20-11154 1141 South Taylor Avenue, LLC

Chapter 11

#16.00 Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f)
Real Property Located at 1141 South Taylor Ave., Montebello, CA 90460

Docket 9

Tentative Ruling:

Tentative for 5/27/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

1141 South Taylor Avenue, LLC

Represented By
Michael R Totaro

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8:19-10158 BP Fisher Law Group, LLP

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#17.00 STATUS CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(order approving stip. to treat hrg on mtn for admin. clm as s/c entered 5-12-20)

Docket 571

Tentative Ruling:

Tentative for 5/27/20:

By stipulation this is treated as a status conference. But no status conference report is filed and the parties have not really informed the court as to how much time is needed for discovery, or what appropriate deadlines would look like.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By

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Marc C Forsythe
Charity J Manee

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#18.00 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
(cont'd from 4-07-20)
(cont'd from 4-08-20 per order approving clm #32-2 & clm 70 entered 4-06-20)

Docket 245

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND HMC ASSETS, LLC, AS TRUSTEE OF THE CAM XV TRUST CANCELLING HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW PROOF OF CLAIM NO. 32 ENTERED 5-26-20**

Tentative Ruling:

Tentative for 5/27/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/25/20:

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These nominally are characterized as claims objections. The main disputed issue common to Calendar #s 11, 25, and 28 (which are discussed in a single memorandum because they overlap) are the amounts of the allowable portions of the claims as it appears these claims include accrued interest (and perhaps fees) to which they may not be entitled. Lexington National Insurance Corporation ("Lexington"), one of several surety companies that provided Foreclosure Bonds for foreclosure sales conducted by Debtor in Maryland and Washington D.C. has filed numerous objections to claims against Debtor's estate. The curiosity arises from the fact that several of the claimants have agreed to continue the hearing scheduled for February 25, out to April 7, which explains why so many matters are vacated in this case. However, three creditors, HMC Assets, LLC, as Trustee of the CAM XV Trust (Claim# 32-2), Select Portfolio Servicing, Inc. (Claim #67), and Carrington Mortgage Services (Claim # 70) have decided to press ahead in defending their claims, arguing that they are entitled to the entirety of their claims, even though Lexington has made a fairly compelling argument that they are only entitled to a portion of them, as will be discussed further below.

The BP Fisher Law Group, LLP ("Debtor") was a law firm that was primarily in the business of handling residential foreclosures in the Mid-Atlantic region. The Trust Fund Claims (as defined below) that are the subject of the Trust Fund (as defined below) and payment by the Chapter 7 Trustee pursuant to the Trust Fund Settlement (as defined below) arise out of foreclosures conducted by Debtor which allegedly resulted in Debtor receiving monies in trust that it allegedly failed to remit to the appropriate parties.

In connection with the foreclosure sales that were handled by Debtor, there are two types of parties who may possess claims arising out of the alleged misappropriation of foreclosure sale trust fund monies that were held by Debtor: (A) a Buyer who provided a Buyer Deposit to Debtor when the closing on the foreclosure sale did not actually take place for reasons not related to the Buyer's default (i.e., the Buyer Deposit was not returned to them); and (B) a lender in

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connection with foreclosures sales where a closing took place, an Auditor's Report was ratified, and Debtor did not disburse the net foreclosure sale trust fund monies as required by the ratified Auditor's Report.

Lexington's argues that the trust fund claims are limited to actual trust fund monies that were remitted to Debtor but not paid to rightful claimants. The Buyers are only entitled to a trust fund claim in the exact amount of the Buyer Deposit that was not returned and a lender is only entitled to a trust fund claim in the exact amount of trust fund monies that were not paid to it as set forth in the Foreclosure Court's order ratifying the Auditor's Report. Claimants are not entitled to trust fund claims for any other alleged damages or claims (i.e., no interest, attorney's fees, etc.) – their trust fund claims are limited to the exact amount of trust fund monies that were received by Debtor and later were supposed to be delivered to them. In other words, there is a difference between a genuine trust fund claim, which by its definition is limited to a certain fund misappropriation, and consequential damages claims against the Debtor.

On July 19, 2019, several months after Debtor filed its petition, the Chapter 7 Trustee (formerly Chapter 11 Trustee (the "Trustee") filed his Motion to Approve Compromise Under FRBP 9019 and attached memorandum (the "Trust Fund Motion") (Docket Entry # 146) seeking approval of a settlement (the "Settlement") with Debtor's principal and his related entity Plutos Sama Holdings, Inc. Pursuant to the Trust Fund Motion, \$3,412,000 that was held in one of BP's bank accounts were characterized as trust fund monies arising out of various foreclosure sales. As part of the Settlement, BP's principal and related entity delivered \$4,000,000 to the Trustee and ultimately the \$3,412,000 of trust fund monies (the "Trust Fund") will be used to only pay trust fund claims, i.e., claims arising out of missing foreclosure sale proceeds that were delivered to BP in trust but never delivered to the beneficiary (i.e., a lender, Buyer, junior lienholder, or borrower, as appropriate) (the "Trust Fund Claims"). As the court reads it, this fund was never designed to be a comprehensive payment of all that victims *qua* creditors might be entitled to as consequential damages; it was designed purely

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to refund that which were never truly Debtor's monies. On August 14, 2019, the court entered the Order Granting Motion to Approve Compromise Under Rule 9019 (Docket Entry # 195) (the "Settlement Order") establishing the procedure for filing a trust fund proof of claim. Pursuant to the Settlement Order, the trust fund claim bar date was set as September 16, 2019.

Lexington persuasively argues that the Trust Fund Agreement put into place a claim process solely for Trust Fund Claims that permitted creditors whose money was being held in trust by the Debtor (but not remitted to such creditor) to file a Trust Fund Claim in the amount of the trust fund money that the Debtor held, but failed to remit to such creditor. In effect, Lexington asserts, Trust Fund Creditors are being treated differently than general unsecured creditors by way of the Trust Fund Settlement vis a vis the Trust Fund because trust fund money is not property of the bankruptcy estate. See *In re Lopez Roman*, 599 B.R. 87, 94 (Bankr. C.D. Cal. 2019) ("funds that are deposited into an escrow account by a debtor, for the benefit of others cannot be characterized as property of the estate"). Therefore, Trust Fund Claimants have a senior interest in trust fund money, but only in the actual amount of trust fund money that the Debtor was holding for Trust Fund Claimants. As such, Lexington argues, Creditors are free to assert that they have suffered additional damages as a result of the failure of the Debtor to timely remit trust fund money, but these additional damages will be nothing more than general unsecured claims against property of the estate.

As the docket for February 25, 2020 shows, there were many hearings on objections to claims scheduled. However, Lexington asserts that it has been successful in resolving many of its objections and will be filing stipulations confirming the actual claim amounts, the three creditors mentioned above being the exceptions.

As to the claims of these three creditors, Lexington argues that they are

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attempting to include general unsecured damage claims (e.g. interest) as part of their Trust Fund Claims in violation of the Trust Fund Settlement. Further, Lexington argues that some of these creditors are attempting to assert Trust Fund Claims for monies that do not belong to them, and that these creditors do not even know how much of their trust fund monies Debtor received and allegedly failed to remit to them. Select Portfolio (Claim #67) and Carrington (Claim #70) have not been able to confirm the exact amounts or provide adequate documentation to support their claims, which is highly problematic. Lexington has propounded discovery to fill in this missing information.

Obviously, there is a great deal more going on here than can readily be resolved in a summary proceeding like a claims objection. Lexington requests that these hearings be treated as status conferences pursuant to LBR 3007-1(b) (5), which gives the court discretion to "treat the initial hearing as a status conference." This will allow the parties to hash out any additional discovery and evidentiary issues that should be addressed prior to an evidentiary hearing scheduled for April 7, 2020. This does seem to be an appropriate suggestion, as in a case like this, more clarity and more information is preferable. All parties involved would likely benefit from treating these hearings as status conferences in contested proceedings. If the parties are unable to agree, at the continued status conference deadlines for discovery and law and motion will be set, possible referral to mediation discussed and a pretrial conference scheduled.

Continue as status conference.

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

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8:19-10158 BP Fisher Law Group, LLP

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#19.00 Lexington National Insurance Corporation's Objection to and Motion to Disallow Proof of Claim No. 70 filed by Carrington Mortgage Services, LLC
(cont'd from 4-07-20 per court's own mtn)
(cont'd from 4-08-20 per order approving stipulation re: clm no. 32-2 and clm no.70 entered 4-06-20)

Docket 263

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN LEXINGTON
NATIONAL INSURANCE CORPORATION AND CARRINGTON
MORTGAGE SERVICES, LLC AND MOTION TO DISALLOW PROOF
OF CLAIM NO. 70 ENTERED 5-21-20**

Tentative Ruling:

Tentative for 2/25/20:
See #11

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, May 27, 2020

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. 50 Filed By Stearns Lending, LLC
(cont'd from 4-7-20 per order approving stip. re: claim no. 50 entered (rescheduled from 5-26-2020 at 11:00 a.m per court) 3-20-20)

Docket 248

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 50 ENTERED 5-08-20**

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**

Wednesday, May 27, 2020

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. 51 Filed By Lakeview Loan Servicing, LLC
(cont'd from 4-07-20)
(cont'd from 4-08-20 per ordered entered 3-20-20)

Docket 249

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 51 ENTERED 5-08-20**

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**

Wednesday, May 27, 2020

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. 52 Filed By First Federal Bank of Florida
(cont'd from 2-25-20 per order approving stip. re: claim no. 52 entered 2-11-20)
(cont'd from 4-08-20 per order entered 3-20-20)

Docket 250

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 52 ENTERED 5-08-20**

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**

Wednesday, May 27, 2020

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. 53 Filed By Lakeview Loan Servicing, LLC
(cont'd from 4-07-20)
(cont'd from 4-08-20 per order entered 3-20-20)

Docket 251

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 53 ENTERED 5-08-20**

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**

Wednesday, May 27, 2020

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. 54 Filed By Lakeview Loan Servicing, LLC
(cont'd from 4-07-20)
(cont'd from 4-08-20 per order entered 3-20-20)

Docket 252

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 54 ENTERED 5-08-20**

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

Wednesday, May 27, 2020

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. 61 Filed By Lakeview Loan Servicing, LLC
(cont'd from 4-07-20)
(cont'd from 4-08-20 per order entered 3-20-20)

Docket 255

*** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 61 ENTERED 5-08-20

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**

Wednesday, May 27, 2020

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. 62 Filed By Nationstar Mortgage LLC D/B/A Champion Mortgage Company
**(cont'd from 4-07-20)
(cont;d from 4-08-20 per order entered 3-26-20)**

Docket 256

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 62 ENTERED 5-08-20**

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**

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#27.00 Lexing National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC (cont'd from 4-7-20 per order approving third stip. between Lexington National Insurance Corporation And Specialized Loan Servicing LLC Adjourning The Hrg on the limited objection to and mtn to disallow proof of claim no. 65 entered 3-20-20) relates to docket no. 258, 310, 311, 316, 408, 409, and 412)
(rescheduled from 5-26-2020 at 11:00 a.m per court)

Docket 258

*** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 65 ENTERED 5-08-20

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

Wednesday, May 27, 2020

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. 66 Filed By Statebridge Company, LLC
(cont'd from 4-7-20 per order approving stip. re: claim no. 66 entered 3-20-20) (rescheduled from 5-26-2020 at 11:00 a.m per court)

Docket 259

*** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 66 ENTERED 5-08-20

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**

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#29.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select Portfolio Servicing, Inc.
**(cont'd from 4-7-20 per second stip and order entered 3-20-20)
(rescheduled from 5-26-20 per court order)**

Docket 260

***** VACATED *** REASON: CONTINUED TO 6-09-20 AT 11:00 A.M.
PER ORDER APPROVING THIRD STIPULATION RE: OBJECTION TO
AND MOTION TO DISALLOW PROOFS OF CLAIM NO. 44 & 67
ENTERED 5-06-20**

Tentative Ruling:

Tentative for 2/25/20:
See #11

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, May 27, 2020

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. 68 Filed By Ditech Financial, LLC
(cont'd from 4-07-20 per court's own mtn)
(cont'd from 4-08-20 per order entered 3-20-20)

Docket 261

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND DITECH FINANCIAL, LLC WITH RESPECT TO THE OBJECTIONS TO AND MOTION TO DISALLOW PROOFS OF CLAIMS NO. 44 AND 68 ENTERED 5-12-20**

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**

Wednesday, May 27, 2020

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. 69 Filed By Newrez, LLC D/B/A Shellpoint Mortgage Servicing (cont'd from 4-7-20-20 per order approving stip. to cont.objs to and motions to disallow proofs of claims #44, #68, #69 and #71- [relates to dkt. no.s 261, 262 and 264] entered 3-20-2020)
(rescheduled from 5-26-2020 at 11:00 a.m per court)

Docket 262

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE
CORPORATION AND NEWREZ, LLC D/B/A SHELLPOINT
MORTGAGE SERVICING WITH RESPECT TO THE OBJECTION TO
AND MOTION TO DISALLOW PROOF OF CLAIM 69 ENTERED 5-12-20**

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**

Wednesday, May 27, 2020

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. 71 filed by Nationstar Mortgage, LLC D/B/A Mr. Cooper, Successor by Merger to Seterus, Inc.
(cont'd from 4-07-20 per own mtn)
(cont'd from 4-08-20 per order entered 3-20-20)

Docket 264

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION BETWEEN LEXINGTON CORPORATION AND
NATIONSTAR MORTGAGE, LLC D/B/A/ MR. COOPER, SUCCESSOR
BY MERGER TO SETERUS, INC. RE: OBJECTION TO AND MOTION
TO DISALLOW PROOF OF CLAIM 71 ENTERED 5-12-20**

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**

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#33.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim
NO. 87 Filed By Trust Bank
(cont'd from 4-7-20 per court's own mtn)
(cont'd from 4-8-20 per order entered 4-01-20)

Docket 449

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND TRUST
BANK ADJOURNING THE HEARING ON THE OBJECTIONS TO
PROOFS OF CLAIM NO. 87 AND 88 ENTERED 5-12-20**

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**

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#34.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim No. 88 Filed by Trust Bank
(cont'd from 4-7-20 per court's own mtn)
(cont'd from 4-8-20 per ordered entered 4-01-20)

Docket 451

***** VACATED *** REASON: CONTINUED TO 6-30-20 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND TRUST
BANK ADJOURNING THE HEARING ON THE OBJECTIONS TO
PROOFS OF CLAIM NO. 87 AND 88 ENTERED 5-12-20**

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**

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#35.00 Ditech Financial, LLC's Objection to and Motion to Subordinate and/or Disallow Proof of Claim No. 44-1 filed by Lexington National Insurance Corporation
(cont'd from 4-07-20 per court's own mtn)
(cont'd from 4-08-20 per order approving stip to cont entered 3-20-200)**

Docket 472

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE
CORPORATION AND DITECH FINANCIAL, LLC WITH RESPECT TO
THE OBJECTIONS TO AND MOTION TO DISALLOW PROOFS OF
CLAIMS NO. 44 AND 68 ENTERED 5-12-20**

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**

Wednesday, May 27, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#36.00 Select Portfolio Servicing, Inc's Objection to and Motion to Disallow or Subordinate Proof of Claim No. 44 filed by Lexington National Insurance Corporation
(cont'd from 4-7-20 per court's own mtn)
(cont'd from 4-8-20 per order approving second stip to cont entered 3-20-20)

Docket 476

*** VACATED *** REASON: CONTINUED TO 6-09-20 AT 11:00 A.M.
PER ORDER APPROVING THIRD STIPULATION RE: OBJECTIONS
TO AND MOTION TO DISALLOW PROOFS OF CLAIMS NO. 44 AND 67
ENTERED 5-06-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Movant(s):

SELECT PORTFOLIO

Represented By
Lauren A Deeb

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, June 3, 2020

Hearing Room 5B

10:00 AM

8:20-11317 Lawrence James Hazell

Chapter 7

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(rescheduled from 6-2-2020 at 10:00 a.m. per court)**

TD AUTO FINANCE LLC
Vs
DEBTOR

Docket 8

Tentative Ruling:

Tentative for 6/3/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Lawrence James Hazell

Represented By
Kevin Tang

Movant(s):

TD Auto Finance LLC

Represented By
Sheryl K Ith

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

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

CONT... Lawrence James Hazell

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**

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

8:18-12052 Frank Bowers, Jr.

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(rescheduled from 6-2-2020 at 10:00 a.m. per court)**

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 88

Tentative Ruling:

Tentative for 6/3/20:

There seems to be a dispute over the status of payments. The debtor is obliged to remain current under the plan and any post confirmation default may result in termination of the stay. The parties are urged to meet and confer over the disparities; failing a stipulation, continue for evidentiary hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

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

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

CONT... Frank Bowers, Jr.

Chapter 13

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, June 3, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

- #3.00 STATUS CONFERENCE RE: Complaint For:**
- I. Denial Of Discharge Pursuant To 11 U.S.C. Sec. 727(a)(2-7);
 - II. Turnover Of Real Property Pursuant To 11 U.S.C. Section 542;
 - III. Turnover Of Funds Pursuant To 11 U.S.C. Sec. 542 & 543;
 - IV. Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. Sec. 547;
 - V. Avoidance Of A Preferential Transfer Pursuan To 11 U.S.C. Sec. 548;
 - VI. Avoidance Of A Post-Petition Transfer Pursuant To 11 U.S.C. Sec. 549
- (cont'd from 4-9-20 per order on stip. to cont. s/c entered 3-16-20)
(cont'd from 5-6-20)
(rescheduled from 6-4-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 6/3/20:
Continue per stipulation (not yet received).

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

CONT... Deborah Jean Hughes

Chapter 7

Why no status report? The status conference has been continued by stipulation to June 4, 2020 at 10:00 a.m. as to Timothy Hughes, Jason Hughes, and Betty McCarthy. It remains on calendar to address any concerns of the non-signatory and then will be continued to June 4, 2020 at 10:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Pro Se

Jason Paul Hughes

Pro Se

Betty McCarthy

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

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**

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

CONT... Deborah Jean Hughes

Anerio V Altman

Chapter 7

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

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

**#4.00 STATUS CONFERENCE RE: Complaint for: 1) Avoidance of Unauthorized Post-Petition Transfer (11 USC Section 549); 2) Recovery of Avoided Transfers (11 USC Section 550); 3) Turnover of Property of the Estate; 4) Quiet Title to Real Property and 5) Injunctive Relief
(rescheduled from 6-4-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 6/3/20:
See #8 and 9 @11:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Hamid Rowshan

Pro Se

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

Wednesday, June 3, 2020

Hearing Room

5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

Fariborz Wosoughkia Pro Se

Natasha Wosoughkia Pro Se

WELLS FARGO BANK Pro Se

Joint Debtor(s):

Natasha Wosoughkia Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack Represented By
Michael G Spector

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 3, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#5.00 Application for Compensation For Period: 1/11/2020 to 5/8/2020:

JENNIFER M. LIU, ACCOUNTANT

FEE: \$17,225.00
EXPENSES :

Docket 95

Tentative Ruling:

Tentative for 6/3/20:

Allow fees and costs for both professionals as prayed. This is not because the application was without flaw, since it had to be clarified by subsequent pleadings, but instead because further fighting over allowance is more costly than it is helpful. However, applicant is cautioned that this case appears to be marginal and so a plan and disclosure should be filed very soon.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

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

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

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
Courtroom 5B Calendar**

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#6.00 First Interim Application and Reimbursement of Expenses
Period: 1/16/2020 to 4/15/2020:

MICHAEL JAY BERGER, DEBTOR'S ATTORNEY

FEE: \$14,546.50

EXPENSES: \$533.53

Docket 47

Tentative Ruling:

Tentative for 6/3/20:
Allow as prayed but see admonition re #5.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

**United States Bankruptcy Court
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Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

CONT... Paul Se Won Kim

Chapter 11

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Wednesday, June 3, 2020

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#7.00 Application for Compensation for Period:

JENNIFER M. LUI, ACCOUNTANT

FEE: \$750.00

EXPENSE: \$0.00

Docket 50

Tentative Ruling:

Tentative for 6/3/20:
Allow as prayed, but see admonition in #5.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 3, 2020

Hearing Room 5B

11:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

**#8.00 Motion To Dismiss Adversary Proceeding
(rescheduled from 6-4-2020 at 11:00 a.m. per court)**

Docket 13

Tentative Ruling:

Tentative for 6/3/20:

This memorandum combines two motions to dismiss as they significantly overlap in both facts and analysis. The first motion to dismiss (calendar #8) is brought by Defendant, Hamid Rowshan ("Rowshan"). The second motion to dismiss (calendar #9) is brought by Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"). Rowshan and Wells Fargo may also be collectively referred to herein as "Defendants." Debtors, Fariborz and Natasha Wasoughkia ("Debtors") are also named defendants and filed an answer to the complaint on April 21, 2020. As far as can be gleaned, Debtors have not filed a motion to dismiss, nor joined either of the present motions. The plaintiff is the Chapter 7 Trustee, Richard Marshack ("Trustee" or "Plaintiff").

Trustee in his complaint, filed March 16, 2020, alleges five separate causes of action, as follows:

- (1) Avoidance of Unauthorized Post-Petition Transfer (11 U.S.C. § 549) (against Rowshan and Wells Fargo);
- (2) Recovery of Avoided Transfers (11 U.S.C. §550) (against all defendants);
- (3) Turnover of Property of the Estate (11 U.S.C. §§541 & 542) (against only Rowshan);

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CONT...

Fariborz Wosoughkia

Chapter 7

(4) Quiet Title To Real Property (against all defendants);

(5) Injunctive Relief (against all defendants)

1. Plaintiff's Asserted Facts

By Grant Deed recorded on August 31, 2007, with the Recorder's No. 2007-0561086, Debtors acquired title to the residential real property in Riverside County commonly known as 14343 Settlers Ridge Court, Eastvale, California 92880 (hereinafter referred to as the "Eastvale Residence") from Centex Homes. The Eastvale Residence is assigned APN 144-450-016-7 and is legally described as: Lot 8 of Tract 30893, in the City of Corona, County of Riverside, State of California, as Per Map Recorded in Book 403 of Maps, Pages 90 through 96, Records of Said County. As of the petition date described below, the Eastvale Residence was titled in Debtors' names and undeniably was property of the estate (or could clearly be made so under the strongarm powers of 11 U.S.C. §544). At the time of the acquisition, the Debtors obtained a loan from JP Morgan Chase Bank in the amount of \$398,200, secured by a deed of trust against the Eastvale Residence.

On November 17, 2010, over three years after the acquisition, the Debtors filed a Petition in the Santa Ana Division (covering Orange County) of the Bankruptcy Court under Chapter 7 (hereinafter referred to as the "Petition Date"). Charles W. Daff was the initially appointed Chapter 7 Trustee (hereinafter referred to as the "Prior Trustee"). On December 15, 2010 the Debtors filed their Schedules, Statement of Financial Affairs and related documents. Plaintiff alleges that nowhere in the schedules or statement of affairs did Debtors disclose their interest in the Eastvale Residence.

The Prior Trustee filed his No Asset Report on February 7, 2011 but withdrew it on July 28, 2011 to administer litigation claims unrelated to the

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Fariborz Wosoughkia

Chapter 7

Eastvale Residence, of which the Prior Trustee allegedly still had no knowledge. After administering the litigation claim, the Prior Trustee filed another No Asset Report on February 13, 2012. On July 22, 2011, the Debtors filed Amended Schedules, which still did not disclose their interest in the Eastvale Residence. Debtors were granted their discharge on May 23, 2012 and the case was closed on May 30, 2012.

By Grant Deed recorded on August 20, 2013 with the Recorder's Office for the County of Riverside, the Debtors conveyed their interest in the Eastvale Residence to Rowshan (Recorders No. 2013-0406512) (hereinafter referred to as the "First Eastvale Transfer"). Contemporaneously, Rowshan refinanced the Eastvale Residence with a Deed of Trust in favor of Wells Fargo, presumably paying of JP Morgan Chase and securing a debt of \$368,000 (Recorder's No. 2013-0406513) (hereinafter referred to as the "Second Eastvale Transfer").

Just a few days thereafter, by Grant Deed recorded on August 27, 2013, Rowshan reconveyed the Eastvale Residence back to the Debtors for no consideration (Recorder's No. 2013-0418283) (hereinafter referred to as the "Third Eastvale Transfer"). Then, on December 31, 2013, only five months later, the Debtors reconveyed the Eastvale Residence back to defendant Hamid Rowshan by Grant Deed for no consideration (Recorder's No. 2013-0602611)

(hereinafter referred to as the "Fourth Eastvale Transfer"). Contemporaneously therewith, Rowshan refinanced the Eastvale Residence with Wells Fargo Bank with a new first Deed of Trust encumbering the Eastvale Residence to secure a debt in the amount of \$279,000 (Recorder's No. 2013-0602613) (hereinafter referred to as the "Fifth Eastvale Transfer").

By Order entered on November 27, 2018, the bankruptcy case was reopened a second time. On August 30, 2019, the court entered its Order to

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CONT... Fariborz Wosoughkia

Chapter 7

Appoint a Chapter 7 Trustee and Marshack was appointed as the replacement Chapter 7 Trustee on September 20, 2019. In November of 2019, Plaintiff was allegedly informed that the Debtors may have had an undisclosed interest in the Eastvale Residence as of the Petition Date. Until that time, Plaintiff asserts, neither Plaintiff, nor the Prior Trustee were aware of, nor reasonably should have been aware of said concealed interest. Plaintiff filed this complaint roughly four months later.

2. Dismissal Standards Under FRCP 12(b)(6)

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*. A claim has facial plausibility when

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Chapter 7

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. The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. Threadbare recitals of elements supported by conclusory statements is not sufficient. *Id.*

3. Statutes of Limitations & Equitable Tolling

The court notes that, with very few exceptions, the operative underlying facts are not contested. For example, it does not appear contested that, in the absence of a tolling theory, the statutes of limitations on Plaintiff's causes of action would have run out years ago. The court is, therefore, presented with a dispositive threshold issue: whether sufficient facts are pled in the complaint, taken as true, and viewed in the light most favorable to Plaintiff as the nonmoving party, as to whether grounds exist for equitable tolling. *Looking only at the complaint itself*, and the accompanying attachments, the court is not persuaded that sufficient facts are pled to cause the court to overlook the statutes of limitations. As will be further discussed below, equitable tolling is extraordinary relief and is to be granted quite sparingly. As such, the complaint would need to provide detailed facts in compliance with the equitable tolling standards. The court does not believe that enough facts are present in the complaint as currently written.

As thoroughly explained in Wells Fargo's motion, the doctrine of equitable tolling is considered extraordinary relief and, in the Ninth Circuit, is not liberally granted by mere assertion. On the contrary, courts in the Ninth Circuit have noted that the bar for applying equitable tolling is set "very high." See *In re Dugger*, 2012 WL 2086562, at *7 (B.A.P. 9th Cir. 2012) ("The threshold for obtaining equitable tolling is very high" and is "unavailable in most cases."). Furthermore, Plaintiff bears the burden of pleading the facts to establish the applicability of equitable tolling. *Hinton v. Pac. Enters.*, 5 F.3d

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391, 395 (9th Cir. 1993).

Chapter 7

A litigant seeking equitable tolling must establish the following: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). As the Rule 12(b)(6) standard recited above states, something more than simple legal conclusions and formulaic recitation of the elements of a cause of action is required in order to withstand a motion to dismiss in a case like this, where the statute of limitations is clearly expired and only equitable tolling can save the case.

Here, Plaintiff's complaint merely states that the asset in question was concealed from Trustee and that he did not become aware of its existence until November of 2019. Thus, Plaintiff concludes, equitable tolling applies and preserves the causes of action relating to the concealed asset. This is manifestly inadequate given the standard of pleading required for equitable tolling to apply. Something about Prior Trustee's relative diligence would be necessary. As Wells Fargo notes, the Complaint does not allege a single action taken by the Prior Trustee in pursuit of his required due diligence, nor any extraordinary circumstance preventing him from asserting his claims.

In rejoinder, Plaintiff argues that Wells Fargo fails to identify anything in the record which would have put Plaintiff on notice. Such an argument appears to improperly attempt to shift the burden to the Defendants and is beyond the scope of the motion. But even indulging this argument, Wells Fargo notes that the complaint in the *Todd Member, LLC* adversary proceeding from 2011 asserted that Debtors were concealing assets and had fraudulently made false oaths and accounts. See Wells Fargo RJN, Ex. E p. 59. Wells Fargo asserts that the Prior Trustee would have been familiar with this adversary proceeding and such allegations should have put him on notice about the probability of concealed assets.

In attempting to demonstrate that the Prior Trustee *did* exercise appropriate due diligence, Plaintiff points to Exhibit A attached to the

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Complaint, which contains what Plaintiff describes as a "very extensive" asset search report, which did not turn up the subject property. It seems that a declaration describing the search parameters would have been helpful here. Wells Fargo notes that the asset search report was a LexisNexis search by a third party rather than a proper search by a title company. Moreover, Wells Fargo points out that, as evidenced by the complaint in the *Mahdavi* action, the Subject Property could have been located by proper searching. In the *Mahdavi* complaint, the transfers of the Subject Property are documented going back to 2007. See Wells Fargo RJN Ex. R, p. 231. Although damaging to Plaintiff's position, this asserted fact is of only limited relevance at this stage in the proceedings. At a later stage, this fact might remove this case from the applicability of cases like *Olsen v. Zerbetz (In re Olsen)*, 36 F.3d 71 (9th Cir. 1994), which stands for the proposition that the doctrine of equitable tolling may be applicable in scenarios where the trustee's delay in discovery is not for want of diligence. But that is not proper in a Rule 12 motion where we are confined to the four corners of the complaint.

The court is mindful that the equitable tolling doctrine does not require exhaustive due diligence by the Plaintiff, but the Plaintiff must plead facts evidencing *reasonable* due diligence. See *In Re United Ins. Management, Inc.* 14 F.3d 1380, 1385 (9th Cir. 1994). On the one hand, the court is generally not disposed to second-guess the efforts of a trustee. But on the other hand, the trustee, as a sophisticated party, is presumably capable of and probably expected to execute a thorough title search, such as the one apparently conducted in the *Mahdavi* action. The court would expect to see such facts pled. Thus, the court must conclude that, under the equitable tolling doctrine, the Prior Trustee's efforts are not sufficiently pled to allow the court to infer that the Trustee exercised appropriate due diligence to invoke equitable tolling. If other examples of the Prior Trustee's due diligence exist, they were not explained in the Complaint, nor did Plaintiff point out where such information could be found. The Plaintiff will certainly argue that the Eastvale Residence was in Riverside County, not Orange County where the bankruptcy was filed, but this does not change the fact that *title was as of the Petition*

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CONT... Fariborz Wosoughkia

Chapter 7

Date in debtors' name. Nothing in the bankruptcy code suggests that the normal universal imputed notice provided under state recording statutes is somehow limited to only that which is readily discernable in the host county. But clearly Debtors were seriously, and possibly fraudulently, delinquent in not revealing the Eastvale Residence in either the initial or amended schedules, and they may have actively misled the Prior Trustee. Such factors, if they exist, may well tilt the balance toward equitable tolling.

As all of Plaintiff's causes of action depend on equitable tolling for their timeliness, the court's analysis could end here. However, equitable tolling has a second component, which is that the Plaintiff must also demonstrate the existence of extraordinary circumstances that stood in the way of discovery. Here too, Plaintiff has failed to plead and/or explain such extraordinary circumstances. That Debtors may have intentionally concealed assets from the Prior Trustee and/or current Trustee is evidence of Debtors' bad faith, untrustworthiness, and general contempt for the bankruptcy process, but whether it qualifies as an extraordinary circumstance as contemplated by the equitable tolling doctrine is, at best, unclear. Debtors concealing assets is, unfortunately, not an uncommon hurdle faced by trustees. As such, a trustee could be reasonably expected to conduct thorough title searches, especially when the trustee has reason to suspect that a debtor might be concealing assets, as was, apparently, the case here.

4. Injunctive Relief

The court need not address this portion of the complaint because its survival is based at on Plaintiff's success on the merits of the underlying case, The court notes that this portion of the complaint contains fairly light analysis of the factors a court considers when such equitable relief is requested. Defendants argue that injunctive relief is not a proper cause of action but is more accurately considered a remedy. As Plaintiff's underlying causes of action are barred by the applicable statutes of limitations and are not presently preserved or revived (unless the doctrine of equitable tolling can

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apply), the remedy of injunctive relief is also barred. See *Brown v. Option One Mortg. Corp.*, 2010 WL 1267774, at *4 (N.D. Cal. Apr. 1, 2010) ("Finally, the remaining claims—causes of action for declaratory relief, rescission and injunctive relief—are not independent claims here, but potential remedies. Since plaintiffs have not properly pled any predicate causes of action, these claims are dismissed.").

5. Leave to Amend

The causes of action against all defendants are barred by the applicable statutes of limitations unless equitable tolling applies. The question then becomes, should leave to amend be granted? Defendants urge the court to dismiss the complaint with prejudice because, they argue, Plaintiff cannot hope to successfully plead around the statute of limitations. However, the court is more inclined to grant Plaintiff leave to amend. The Ninth Circuit is well-known for liberality regarding leave to amend when justice so requires. *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 2001). The court is not ready to declare Plaintiff's case hopelessly barred by the statutes of limitations such that any further attempts would be futile.

For example, at present, Defendants have articulated an argument that the Prior Trustee likely should have discovered the Subject Property by conducting a more thorough title search. But the court is mindful that this is a motion to dismiss, not a summary judgment motion. Thus, the court remains open to the possibility that an amended complaint could plead facts demonstrating that the Prior Trustee's efforts were in keeping with reasonable standards, which, taken as true, would likely satisfy the due diligence prong. However, that would still leave Plaintiff the burden of demonstrating some extraordinary circumstance(s) that prevented the Prior Trustee from discovering the existence of the Subject Property much earlier. Plaintiff's opposition suggests that the *Olsen* case stands for the proposition, by implication, that concealment of assets qualifies as an extraordinary

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circumstance, but that conclusion may be speculative or might be strained under these facts as it suggests the concealment must be active. Maybe actively lying in response to the Trustee's clear question posed to the Debtors' at the 341a meeting or elsewhere might suffice? Can mere omission of the asset on original *and amended* schedules signed under penalty of perjury suffice? Why should the prior Trustee not be bound by the recording statutes and their imputed universal notice? In other, related contexts [regarding alleged BFPs] such notice is determinative. See 11 U.S.C. §549(c)

In any case, Plaintiff's opposition suggests that he may have additional claims to bring and requests leave to amend to include those new causes of action. Plaintiff should be given leave to amend the complaint to plead facts entitling him to equitable tolling on the causes of action already put forth and any new theory that can be plausibly stated.

Grant with 30 days leave to amend

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Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By

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CONT... Fariborz Wosoughkia

Chapter 7

Carlos F Negrete - INACTIVE -

Defendant(s):

Hamid Rowshan

Represented By
Vincent Renda

Fariborz Wosoughkia

Represented By
Edward T Weber

Natasha Wosoughkia

Represented By
Edward T Weber

WELLS FARGO BANK

Represented By
Zi Chao Lin

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

**#9.00 Defendant's Motion To Dismiss Plaintiff's Complaint
(rescheduled from 6-4-2020 at 11:00 a.m. per court)**

Docket 18

Tentative Ruling:

Tentative for 6/3/20:
See #8.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Hamid Rowshan

Represented By
Vincent Renda

Fariborz Wosoughkia

Represented By

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CONT... Fariborz Wosoughkia Chapter 7

Edward T Weber

Natasha Wosoughkia

Represented By
Edward T Weber

WELLS FARGO BANK

Represented By
Zi Chao Lin

WELLS FARGO BANK, N.A.

Represented By
J. Barrett Marum

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

**United States Bankruptcy Court
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Wednesday, June 10, 2020

Hearing Room 5B

10:00 AM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

**#1.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-06-2020)
(rescheduled from 6-9-2020 at 10:30 a.m per court)**

WELLS FARGO BANK
Vs.
DEBTOR

Docket 38

Tentative Ruling:

Tentative for 6/10/20:

Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/6/20:

Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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CONT... Delia Banuelos De Castillo Chapter 13

appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Grant unless lender confirms debtor is current or APO.

Party Information

Debtor(s):

Delia Banuelos De Castillo

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, National

Represented By
Kirsten Martinez

**United States Bankruptcy Court
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CONT... Delia Banuelos De Castillo

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 10, 2020

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10:00 AM

8:20-10256 Thomas Richard Reynolds

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(rescheduled from 6-9-2020 at 10:30 a.m. per court)**

WILMINGTON SAVINGS FUND SOCIETY
Vs
DEBTOR

Docket 24

Tentative Ruling:

Tentative for 6/10/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Thomas Richard Reynolds

Represented By
Anerio V Altman

Movant(s):

Wilmington Savings Fund Society

Represented By
Erin M McCartney

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

Wednesday, June 10, 2020

Hearing Room 5B

10:00 AM

CONT... Thomas Richard Reynolds

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 10, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

**#3.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(rescheduled from 6-9-2020 at 10:30 a.m. per court)**

EDWARD MANDEL, IRENE MANDEL, SAMUEL MANDEL, VIBE MICRO, INC
Vs
DEBTOR

Docket 132

Tentative Ruling:

Tentative for 6/10/20:

Grant. No levies absent further order. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Vibe Micro, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, June 10, 2020

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10:00 AM

CONT... Igor Shabanets

Chapter 7

Samuel Mandel

Represented By
Michael Jay Berger

Irene Mandel

Represented By
Michael Jay Berger

Edward Mandel

Represented By
Michael Jay Berger

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
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Wednesday, June 10, 2020

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01041 Marshack v. West Coast Business Capital LLC et al

#4.00 STATUS CONFERENCE RE: Complaint For 1. Declaratory Relief; 2. Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550; 3. Avoidance of Lien and Equitable Subordination Pursuant to 11 U.S.C. Section 510(c); 4. Avoidance and Preservation of Claims Pursuant to 11 U.S.C. Section 502, 506, 544, and 510(c); 5. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 548 and 550; 6. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 544, 548 and 550; and 7. Usury and Unjust Enrichment/Disgorgement; 8. Injuntion; 9. Determination of Liens Pursuant to 11 U.S.C. Section 502, 506 and 551; Unconscionability; 11. Violation of N.Y. General Business Law Section 349; 12. Violation of California Business and Professions Code Section 17200; 13. Fraud **(rescheduled from 6-11-2020 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 6-04-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Pro Se

Vernon Capital Group LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

**United States Bankruptcy Court
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10:00 AM

CONT... **i.i. Fuels, Inc.**

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
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Wednesday, June 10, 2020

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#5.00 STATUS CONFERENCE RE: Complaint For 1. Declaratory Relief; 2. Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550; 3. Avoidance of Lien and Equitable Subordination Pursuant to 11 U.S.C. Section 510(c); 4. Avoidance and Preservation of Claims Pursuant to 11 U.S.C. Section 502,506,544, and 510(c); 5. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 548 and 550; 6. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 544, 548 and 550; 7. Usury and Unjust Enrichment/Disgorgement; 8. Injuntion; 9. Determination of Liens Pursuant to 11 U.S.C. Section 502, 506 and 551; Unconscionability; 11. Violation of N.Y. General Business Law Section 349; 12. Violation of California Business and Professions Code Section 17200; 13. Fraud; 14. Negligence Per Se - Violation of California Finance Lending Law **(rescheduled from 6-11-2020 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 6-04-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited	Pro Se
EBF Partners LLC, a Delaware	Pro Se
Forward Financing LLC, a Delaware	Pro Se
Mantis Funding LLC, a Delaware	Pro Se

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

10:00 AM

CONT... i.i. Fuels, Inc. Chapter 7

NEXGEN Capital Limited Liability	Pro Se
Queen Funding LLC, a New Jersey	Pro Se
Yes Funding Corp., a New York	Pro Se
Atlas Acquisitions, LLC, a New	Pro Se
Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
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**

Wednesday, June 10, 2020

Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

**#6.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 1-22-20)**

Docket 1

Tentative Ruling:

Tentative for 6/10/20:

Convert? If the case should remain in Chapter 11, why?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 1/22/20:

Continue to April 8, 2020 at 10:00 a.m. Appearance waived.

Tentative for 9/25/19:

Continue to January 22, 2020 at 10:00 a.m.. Appearance may be by telephone.

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10:00 AM

CONT... Vitargo Global Sciences, Inc.

Chapter 11

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:

Status? Conversion?

Tentative for 3/20/18:

See #15.

Tentative for 1/16/18:

Continue to confirmation hearing.

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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
Aram Ordubegian
Christopher K.S. Wong

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CONT... Vitargo Global Sciences, Inc.

Chapter 11

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Hearing Room 5B

10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#7.00 Chapter 11 Trustee's Motion To Approve Second Amendment To Promissory Note

Docket 539

Tentative Ruling:

Tentative for 6/10/20:

Grant motion to modify. It is less clear to the court that the case should remain in Chapter 11. The court will hear argument on this point.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

Trustee(s):

Richard J Laski (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian
Christopher K.S. Wong
Leonard M Shulman

**United States Bankruptcy Court
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10:00 AM

CONT... Vitargo Global Sciences, Inc.

Ryan D O'Dea

Chapter 11

United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 Lexington National Insurance Corporation's Motion For Order Compelling Select Portfolio Servicing, Inc. To Produce Settlement Agreement
(cont'd from 5-20-20 per order apprvng fourth stip. on the obj. to an mtn to disallow proofs of claim no. 44 and 67 entered 5-14-20)

Docket 568

*** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATED PROTECTIVE ORDER AND RESOLUTION OF MOTION
TO COMPEL ENTERED 6-01-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 10, 2020

Hearing Room 5B

11:00 AM

8:19-12978 David Yanez

Chapter 7

- #9.00** Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder, and Back-Up Bidder as Good-Faith Purchaser Pursuant to 11 U.S.C. § 363(m); (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale; and (5) Waiving the Fourteen (14) Day Stay Prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure **(rescheduled from 6-9-2020 at 11:00 a.m. per court)**

Docket 42

Tentative Ruling:

Tentative for 6/10/20:

This §363(f) motion is to sell the property commonly known as 423 Avenida Granada #16, San Clemente for \$1.3 million. The motion is unopposed. However, as the court reads the motion, the proceeds will be insufficient to clear both liens of record, Shellpoint (\$877,980) and Cornerstone (\$930,000). Are these, in fact, two separate liens? Is the sale intended to be subject to one of the liens? There is also discussion about the debtor's homestead and reimbursement to the broker. Lacking is any helpful discussion about how § 363(f) or any of its five subsections work in these circumstances if there are, in fact, two encumbrances exceeding the price. Is the junior lienor consenting?

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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11:00 AM

CONT... David Yanez

Chapter 7

pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

David Yanez

Represented By
Summer M Shaw

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Ryan W Beall

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11:00 AM

8:19-14600 Consumer Financial Alliance LLC

Chapter 7

#10.00 Application to Employ Krystina T. Tran as Special Counsel To Chapter 7 Trustee
(cont'd from 5-27-20 per order approving stip. to cont hrg entered 5-26-20)

Docket 25

Tentative Ruling:

Tentative for 6/10/20:

The opposition is mostly a rehash of the dismissal motion and concludes with the presumptuous argument that there's "nothing to see here" so the trustee should not even be able to employ a lawyer to investigate or prosecute. That is not the defendant's call to make.

Grant.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Consumer Financial Alliance LLC

Represented By
Krystina T Tran

Trustee(s):

Thomas H Casey (TR)

Represented By

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CONT...

Consumer Financial Alliance LLC

Krystina T Tran

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 10, 2020

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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

- #11.00** Motion To Dismiss First Amended Adversary Complaint, Or In The Alternative, To Strike Portions
(cont'd from 5-06-20 per order on joint stip. re: to cont. hearing entered 4-23-20)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)
(rescheduled from 6-4-2020 at 11:00 a.m. per court)

Docket 11

Tentative Ruling:

Tentative for 6/10/20:

This is Defendant and Chapter 7 Trustee, Thomas H. Casey's ("Trustee's") Rule 12 (b)(6) motion to dismiss the First Amended Complaint ("FAC") filed by Plaintiff, Estate of William L. Seay ("Plaintiff"). Defendant asks that leave to further amend not be granted. Plaintiff opposes the motion.

To keep this memo succinct, the factual and procedural history are significantly condensed. The FAC and subsequent pleadings contain much more comprehensive recitations of the serpentine factual and procedural backgrounds of the underlying bankruptcy case and this adversary proceeding. Only the most pertinent aspects are contained below for the reader's benefit.

1. FRCP 12(b)(6) 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

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CONT...

Robert A. Ferrante

Chapter 7

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*.

2. Brief Background

The following is a condensed summary of the relevant factual and procedural backgrounds as put forth in Plaintiff's FAC. On May 4, 2004, Col. Seay obtained a judgment against Debtor, Robert Ferrante ("Debtor") in the principal amount of \$2,471,057.16 ("Judgment"). The Judgment was perfected against real property assets of the Debtor in Orange County by the recording of an abstract of judgment with the Orange County Recorder's Office on May 20, 2004 ("Seay Lien"). The Judgment was unanimously affirmed in the Second District Court of Appeal in 2005.

Under California law, the Seay Lien attached to all real property

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CONT... Robert A. Ferrante

Chapter 7

interests of the Debtor in Orange County whether existing on the date of recordation or acquired in the future, whether legal or equitable, fixed or contingent. (Code of Civ. Proc. § 697.340(a).) The Seay Lien gained and continues to gain interest at the rate of 10% per annum, may be renewed every five years and must be renewed every ten years. When renewed, the accrued interest is added to principal to create a new principal amount, which amount then gains interest at 10% per annum until the next renewal. The Seay Judgment was always timely renewed. Thus, on the petition date, the Judgment was \$3.877 million.

Although Debtor claimed only \$500 in assets, Defendant decided to pursue the case as an asset case based upon evidence received from attorney Thomas Vogele ("Vogele"). Trustee employed Vogele's law firm to act as his counsel.

Third party Remar Investments LP ("Remar") is a Nevada limited partnership which held a \$2 million trust deed recorded against the Property located at 518 Harbor Island Drive, Newport Beach, CA 92660 ("the Property" or "518 Property") on December 27, 2010. (See generally, 8:16-cv-00337-MWF ("Remar Appeal"), Sept. 13, 2016 Order affirming Judgment, Dkt. 23).) The 2010 note and trust deed, executed by Debtor's ex father-in-law Oscar Chacon as trustee of the 518 Harbor Island Drive Trust, "took out" a 2009 note and trust deed of \$1.5 million recorded on September 25, 2009. *Id.* In a consolidated adversary action both Defendant Trustee and Col. Seay alleged that Remar was Debtor's confederate and coconspirator in a scheme to enter into bogus transactions in order to defeat creditor claims and place artificially high encumbrances on the 518 Property.

Third party 518 Harbor Island Drive Trust ("Trust I") was a defectively formed Qualified Personal Residence Trust ("QPRT") created by Debtor on September 16, 1994 to hold title to the 518 Property. At the time of its formation, Debtor was in a separate Chapter 7 proceeding filed in December

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CONT... Robert A. Ferrante

Chapter 7

1993. Debtor was the settlor, sole trustee and residual beneficiary of the Trust I. Trust I held nominal title to the Property from 1994 to 2001, and again from 2006 to 2014. (Remar Appeal, Dkt. 23.) The BAP ruled, however, that Trust I terminated in December 1998 at which time it reverted to Debtor individually. (*In re Ferrante*, 2015 WL 5064807 (9th Cir. B.A.P. Aug. 26, 2015) (unpublished), also at 9th Cir. Case No. 14- 1222, Dkt. 49.)

Third party 518 Harbor Island Drive Trust III ("Trust III") is a separate and expressly revocable trust self-settled by Debtor on or about March 23, 2001. Trust III continuously held record title to the 518 Property from 2001 through September 29, 2006, including on May 20, 2004 when the Seay Judgment was recorded in Orange County, California. Both the Bankruptcy Court and District Court have ruled that because Trust III was expressly revocable, the Seay Judgment attached to the 518 Property on the date of recordation, despite ostensibly different record title.

Thomas Vogele is a lawyer who practices in Orange County, California, through his law firm Thomas Vogele & Associates APC ("TVA"). On the petition date, TVA represented creditor W&W Properties. In September of 2010, TVA entered into an agreement with Defendant to act as Special Litigation Counsel to the insolvent estate on a contingent fee basis to initiate litigation to recover money and property of Debtor (and hence of the estate) that was undeclared in the Schedules.

On April 23, 2010, TVA filed a motion to dismiss the bankruptcy on behalf of W&W alleging that the Petition was a "sham," that Debtor engaged in fraudulent conduct and grossly undervalued his assets. (Dkt. 20, 21.) After the motion was denied, TVA approached Casey and offered services as Special Litigation Counsel to the Estate. According to the application to employ, Mr. Vogele represented that he had detailed knowledge of Debtor's affairs arising from his representation of W&W. TVA stated that he no longer represented W&W and had no conflict of interest. Plaintiff asserts that the

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CONT... Robert A. Ferrante

Chapter 7

relationship among and between W&W, Debtor and TVA remains opaque. But this representation is not only irrelevant to the issues in this motion, it is also belied by the order of this court authorizing the representation.

3. The Compromise Settlement and Carve-Out Agreement

Trustee and Col. Seay entered into a written agreement on April 7, 2014 aptly titled Settlement and Carve Out Agreement ("Agreement"). Under the Agreement the estate and Seay agreed to an effective 50/50 split of the proceeds of the 518 property, with half of the proceeds either free of the Seay lien or at least subordinated to recovery by other creditors. Although the parties have referred to the Agreement as a "carve out," Plaintiff now argues that the Agreement is much different than the usual 'carve out.' Plaintiff argues that, ordinarily, a secured creditor, will solicit a trustee's aid in selling an asset to avoid state court foreclosure remedies and remit some of the recovery to the estate. A carve out, he argues, is a controversial exception to the universal prohibition against sale of encumbered assets by trustees simply as a means of generating fees. In this case, Plaintiff argues that this Agreement was not solicited by Col. Seay and he derived no benefit from it. The Agreement was allegedly demanded by Trustee solely in order to raise money to pay his and his attorney's fees. The court does not accept this characterization; this was noticed to creditors as, and in fact it clearly was, a necessary inducement for the Trustee to do anything except file a "no asset" report as everything was heavily encumbered and the various obstacles created by Ferrante to administration were formidable. The 518 property was not even initially of record in the debtor's name. The 518 property was in any event heavily encumbered, by Bank of America and both the Seay and Remar liens, well beyond its value. The Trustee cannot have been expected to do anything except file a "no asset" report unless there was at least some prospect of there being something for the Trustee's primary constituency, the unsecured creditors. The fact that all the now unencumbered proceeds may be used up in fees, as Seay now argues, is indeed unfortunate but given the

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CONT... Robert A. Ferrante

Chapter 7

extremely contentious and serpentine way this case unfolded, in retrospect this is not surprising.

According to Plaintiff, the basic terms of the Agreement were that Col. Seay agreed to "defer" receipt of \$1.6 million (half) attributable to his lien from the sale of the Property ("Deferred Seay Proceeds") to enable the insolvent estate the liquidity to pursue Debtor and third parties for recovery of damages and undeclared assets. In this characterization the Deferred Seay Proceeds were to be later paid back out of recoveries from litigation by Trustee along with additional fees, costs and interest which accrued. But the Agreement provides for at least a subordination, and, as it developed, there was nothing left with which to pay the subordinated half of the proceeds. The Trustee was given express authority in the Agreement not to administer assets he deemed not worthwhile or feasible to administer (as any competent trustee would) and Seay was given the express option to first acquire them, which he ultimately did for \$1 (on each of two separate occasions), The court approved the Agreement by Order entered on June 18, 2014 at a hearing after notice to creditors in which Seay actively joined in support of the Agreement.

Plaintiff asserts that Special Litigation Counsel TVA did not use the Deferred Seay Proceeds to litigate the Adversary Action in good faith as required by the Agreement. Instead, Defendant abandoned all claims. He recovered nothing from the defendants in the Adversary Action. After Col. Seay objected to abandonment, the court ordered the claims sold to him on two occasions for one dollar each time. Plaintiff asserts that the only "recovery" the estate has obtained beyond that \$2 is a \$25,000 payment from Debtor's ex-wife Mia. But, Plaintiff argues, that amount is offset by the \$62,700 payment Defendant agreed to make to Debtor to entice settlement. Debtor's estate is and always has been administratively insolvent. Plaintiff asserts that the Agreement acknowledged that the Seay Lien was valid and enforceable, had been timely renewed, was perfected by the recording of an

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Robert A. Ferrante

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abstract, and attached to the 518 Property on May 20, 2004. In other words, the Trustee agreed as part of the compromise not to challenge the Seay lien. The parties agreed that the Seay Lien was worth \$5,521,389.49 as of the date of execution of the Agreement and was second in priority only to a \$1 million Bank of America trust deed.

4. The FAC and Derived Judicial Immunity

Plaintiff filed the First Amended Complaint ("FAC") on September 5, 2019. Plaintiff in the FAC alleges 3 claims for relief against Trustee and Does 1-25:

(1) Restitution of Benefits Conferred After Unilateral Rescission of the Underlying Contract;

(2) Common Count for Money Had and Received; and

(3) Declaratory and Injunction Regarding the Proceeds in the Segregated Account

Trustee argues that all actions taken by the Trustee in satisfaction of his obligations to Seay under the Agreement were undertaken pursuant to his duties under the Bankruptcy Code and pursuant to this court's orders. Trustee argues that he is, therefore, judicially immune from this lawsuit. In support Trustee cites *Wickstrom v. Ebert*, 585 F. Supp. 924, 934 (E.D. Wis. 1984) for the proposition that "judicial immunity not only protects judges against suit for acts done within their jurisdiction, but also spreads outward to shield related public servants, including . . . trustees in bankruptcy..." Bankruptcy trustees are entitled to broad immunity from suit when acting within the scope of their authority and pursuant to court order. *In re Harris*, 590 F.3d 730, 742 (9th Cir. 2009) cert. den., 130 S. Ct. 3413 (U.S. 2010), citing *Bennett v. Williams*, 892 F.2d 822, 823 (9th Cir. 1989).

Trustee argues that the issue of qualified immunity is properly

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considered in a motion pursuant to Fed. R. Civ. P. 12(b)(6), and "unless the plaintiffs allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery." *Baumeister v. New Mexico Comm 'n for the Blind*, 425 F. Supp. 2d 1250, 1268 (D.N.M. 2006), citing *Behrens v. Pelletier*, 516 U.S. 299,306, 116 S. Ct. 834 (1996) (internal quotation marks and citation omitted). Moreover, Trustee argues that the Ninth Circuit Court of Appeals has specifically applied qualified judicial immunity to the conduct of bankruptcy trustees in holding that a trustee is not liable for mistakes in business judgment. *Bennett v. Williams*, 892 F.2d 822, 824 (9th Cir. 1989). The *Bennett* court explained that the Ninth Circuit is "deferential to the business management decisions of a bankruptcy trustee" and has held trustees "immune from collateral attack for acts of mismanagement when the trustee was acting within his court authorization." *Id.* at 824.

According to Trustee, in this case, the Trustee sought and obtained approval for each action he undertook pursuant to his obligations under the Agreement. Trustee proceeds to chronicle each relevant action he undertook pursuant to the Agreement, and how each action received explicit court approval. Trustee also argues that the abandonment of the adversary proceedings was a valid exercise of his business judgment, and that he did, in fact, hold up his end of the Agreement by presenting Plaintiff with the right of first refusal for the abandoned claims (which Plaintiff exercised for nominal prices of \$1)..

Trustee's basic proposition that trustees enjoy qualified judicial immunity is obvious and indisputable. Therefore, unless the complaint were amended to clarify that it is not the Trustee in his individual capacity who is sued, but rather the estate for which he is representative, the motion should be granted. But the Plaintiff seems to acknowledge the point and if given the opportunity, would fix the standing issues not only as to the Seay estate, but as to the Trustee clarifying he is not sued in a personal capacity but only as

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representative of the *Ferrante* estate as well. So, in the interest of efficiency, the court will address the other arguments as well.

5. Collateral Attack

Trustee also argues that the FAC must be dismissed because it is simply an impermissible collateral attack on this court's prior orders. Trustee maintains that all actions he undertook were well within the boundaries prescribed by this court's orders, including abandonment of the other claims. Thus, Trustee concludes that the FAC, which alleges breach of the implied covenant of good faith and fair dealing, is simply attempting to collaterally attack the court's prior orders, including the approval of the underlying Agreement, rather than pursuing a proper remedy on appeal.

Missing from Trustee's motion is any authority that contains a fact pattern like the one at issue. As the court sees it, Plaintiff in the FAC does not argue that the court's order approving the Agreement is invalid in any way. As noted by Plaintiff, the Order only made findings of good faith in the negotiation of the Agreement's terms, not in its execution. Whether Trustee *executed* the Agreement in good faith, or whether there might have been fraud in the inducement, is a highly fact-specific question that cannot be answered at this initial pleading stage. Thus, it does not seem accurate to characterize the FAC as collaterally attacking the court's order. But that is not the only argument of concern to the court.

6. Judicial Estoppel

Trustee next argues that Plaintiff is judicially estopped from arguing that the Agreement was the product of duress, fraud, or undue influence because Plaintiff took the opposite position in support of approving the Agreement. In support of this argument, Trustee cites *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) for the proposition that judicial estoppel "generally prevents a party from prevailing in one phase of a case on an

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argument and then relying on a contradictory argument to prevail in another phase." As noted above, in the motion to approve the Agreement, both parties agreed that the negotiations, though tense, were conducted in good faith. Plaintiff filed papers in support of the motion to approve the Agreement. It is not clear why duress or undue influence were not argued when the court approved the Agreement. If Plaintiff felt that he was being forced to accept the Agreement against his will or better judgment, it should have been raised at the time. It was not, but instead the court was specifically urged to approve the Agreement by Plaintiff.

On this point, Plaintiff's opposition does not directly dispute Trustee's contention that Plaintiff already stated that the Agreement was the product of good faith arm's-length negotiations. Instead, Plaintiff argues Trustee's judicial estoppel arguments are vague beyond comprehension. In any case, Plaintiff argues that "good faith" is not the standard for rescission or restitution under the state statutory scheme, nor is it included in the grounds for rescission listed in Civil Code Section 1689(b)(1)-(7). Plaintiff explains further, rescission is an out-of-court remedy completed by notice, and if the statutory grounds are present the good faith of the defendant is irrelevant. Notice of rescission in compliance with the statute extinguishes the contract *ab initio* and all performance due thereunder. Rescission entitles the aggrieved party to then seek judicial assistance in the form of a restitution claim to recover the benefits previously conferred which the defendant refuses to return. But restitution still requires a showing of entitlement based on facts, not automatically as a matter of law.

The effect of Plaintiff's arguments in a 12(b)(6) context is left unclear. Perhaps the better part of valor is to grant the motion or strike portions of the FAC to the extent that they are based on duress or undue influence at the inception, because even though they appear to be properly pled, under judicial estoppel doctrines should have been brought to the court's attention at the time the Agreement was approved. Instead, at that time, Plaintiff

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apparently took the opposite position, and so cannot be heard now to argue this point. However, the FAC also seems built upon allegations of fraud in the inducement and fraudulent misrepresentation. Again, as the court reads the FAC, the alleged fraud and misrepresentations only became apparent *after the court approved the Agreement*. But the allegations are insufficient to meet the requirements of Rule 9. What, specifically, did the Trustee or his representatives say or do that was inconsistent with the duties outlined in the Agreement? No sufficient facts are pled in the FAC to meet the heightened standard required under Rule 9. It seems to the court that everything done was consistent with what the Agreement requires, but the court cannot preclude the possibility that Plaintiff can articulate something actionable.

7. Other Arguments

Trustee makes a few other arguments that do not really move the needle toward dismissal. For example, the court is not disposed nor required to examine a complaint in excruciating detail as Trustee requests. Furthermore, some of these arguments nearly require the court to make findings of fact, which, in this case, seems inappropriate at this early stage.

For example, Trustee's arguments regarding inconsistencies between certain factual allegations and exhibits in the record do not require dismissal of the FAC. First, the motion does not identify many of these purported inconsistencies and does not explain how such inconsistencies mandate summary dismissal. Second, Plaintiff still bears the burden of proving every element of every claim. These inconsistencies, to the extent they exist, may yet present a problem for Plaintiff, but later. Trustee also takes issue with certain allegations that cast him and Vogeles in an unflattering light. The court is not disposed to make judgment nor draw any inference based only on allegations. Trustee is well-known to the court and he need not worry about any prejudice accruing as a result of the allegations. The court will, as it must, base any judgment solely on proven fact, not on mere allegation or innuendo.

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As to Plaintiff's capacity to sue, Plaintiff concedes the need for a change in party and plans to obtain a stipulation to have Col. Seay's surviving spouse, Nancy Klein Seay, substituted in as Plaintiff. While at it, the capacity of Mr. Casey also needs amendment.

8. Conclusion

The only task before the court is to test the sufficiency and plausibility of the causes of action based on facts alleged. This is not a summary judgment motion. Some of the Trustee's arguments are persuasive. The Trustee should not be sued in his individual capacity as he enjoys qualified judicial immunity. The capacity of Plaintiff as estate representative must be amended as required by California law. Undue influence and duress or the like are out because Plaintiff, represented by counsel, having actively supported the motion to approve the Agreement, is judicially estopped from denying those same points now. This leaves a very narrow remaining place for Plaintiff to stand, i.e. that somehow there was fraud in inducement not discovered until after court approval, or possibly that the Agreement was breached in some way. From what the court remembers of these events the plausibility threshold is *barely* met, only because the court construes its role at this point is to deny the Rule 12(b) motion if, taken as true, there is any way a claim can be stated. But the Rule 9 requirements are not met insofar as fraud is concerned and the Plaintiff will have to come up with something plausible and of substance regarding the particular details of the alleged fraud. In the Ninth Circuit great liberality of amendment is afforded, and so only for this reason will leave to amend be granted...this time. But an admonition is perhaps in order: just because the estate's half of proceeds was consumed allegedly in fees does not *ipso facto* translate into fraud. Regrettably, this kind of very expensive administration where unsecured creditors end up with nothing is not even unusual, and every case must be

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evaluated in its own light. This was an extremely difficult case. The facts presented to the Trustee and his lawyers at the time of the Agreement were very daunting, and the Trustee is not to be faulted for making a calculated effort.

Grant with 30 days to amend consistent with the above

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

**United States Bankruptcy Court
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CONT... Robert A. Ferrante

Chapter 7

Natasha Riggs

Trustee(s):

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Voegelé

Brendan Loper

Cathrine M Castaldi

**United States Bankruptcy Court
Central District of California
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Wednesday, June 10, 2020

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11:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#12.00 Debtor's Emergency Motion for Order Authorizing: 1. Use of Cash Collateral On An Interim Basis; and 2. Setting Final Hearing On Use of Cash Collateral

Docket 6

Tentative Ruling:

Tentative for 6/10/20:
Per order, opposition due at hearing.

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Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 10, 2020

Hearing Room 5B

11:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#13.00 Debtor's Emergency Motion For Order Authorizing Debtor To Pay Wages & Benefits

Docket 7

Tentative Ruling:

Tentative for 6/10/20:
Per order, opposition due at hearing.

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Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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

Monday, June 15, 2020

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

- #1.00 TRIAL 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 p/c hrg held on 12-19--19) (re-scheduled from 2-20-20 per court's own mtn) (cont'd from 3-16-20)**

Docket 1

***** VACATED *** REASON: RE-SCHEDULED TO 9/14/20 AT 10:00 A.M. PER COURT'S OWN MOTION**

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
Central District of California
Santa Ana
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Monday, June 15, 2020

Hearing Room 5B

10:00 AM

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

Chapter 13

**#2.00 Debtor's Objection To Claim 5-2 Submitted By Alamitos Real Estate Partners II, LP
(cont'd from 2-19-20)
(cont'd from 3-18-20)**

Docket 71

***** VACATED *** REASON: RE-SCHEDULED TO 9-14-20 AT 10:00
A.M. PER COURT ORDER**

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
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Tuesday, June 16, 2020

Hearing Room 5B

10:00 AM

8:20-11264 Nataly Vanessa Tovalino

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**SANTANDER CONSUMER USA INC
Vs
DEBTOR**

Docket 7

Tentative Ruling:

Tentative for 6/16/20:
Grant. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Nataly Vanessa Tovalino

Represented By
Kevin J Kunde

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 16, 2020

Hearing Room 5B

10:00 AM

CONT... Nataly Vanessa Tovalino

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Tuesday, June 16, 2020

Hearing Room 5B

10:00 AM

8:19-13186 Angela Huichuan Yu

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**DAIMLER TRUST
Vs.
DEBTOR**

Docket 86

***** VACATED *** REASON: OFF CALENDAR -SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 6-05-20**

Tentative Ruling:

- NONE LISTED -

Party Information

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**

Tuesday, June 16, 2020

Hearing Room 5B

10:00 AM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-06-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 47

Tentative Ruling:

Tentative for 6/16/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 5/6/20:
Same, grant unless APO stipulated. Appearance is optional.

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Tuesday, June 16, 2020

Hearing Room 5B

10:00 AM

CONT... Walter Quiroz and Carmen Quiroz Chapter 13

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Tentative for 4/8/20:

Grant unless and APO is stipulated. Appearance is optional.

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Tentative for 2/25/20:

Grant unless current or APO.

Party Information

**United States Bankruptcy Court
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Santa Ana
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Tuesday, June 16, 2020

Hearing Room 5B

10:00 AM

CONT... Walter Quiroz and Carmen Quiroz

Chapter 13

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Movant(s):

U.S. Bank National Association

Represented By
Sean C Ferry
Eric P Enciso

Trustee(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 16, 2020

Hearing Room 5B

10:00 AM

8:18-10808 Jack Dennis Mitchell and Kathleen Marie Mitchell

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**PENNYMAC LOAN SERVICING LLC
Vs.
DEBTOR**

Docket 44

Tentative Ruling:

Tentative for 6/16/20:

Grant unless current or APO stipulation. Appearance optional.

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Party Information

Debtor(s):

Jack Dennis Mitchell

Represented By
Nicholas M Wajda

Joint Debtor(s):

Kathleen Marie Mitchell

Represented By
Nicholas M Wajda

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, June 16, 2020

Hearing Room 5B

10:00 AM

CONT... Jack Dennis Mitchell and Kathleen Marie Mitchell

Chapter 13

Movant(s):

PENNYMAC LOAN SERVICES,

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 16, 2020

Hearing Room 5B

10:00 AM

8:19-12603 David Bergman and Anne Bergman

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**WILIMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTORS**

Docket 57

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 6-04-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Bergman

Represented By
Gary Polston

Joint Debtor(s):

Anne Bergman

Represented By
Gary Polston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:19-13886 Gary C. Macrides

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 5-20-20)**

Docket 0

Tentative Ruling:

Tentative for 6/17/20:

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Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

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Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

CONT... Gary C. Macrides

Chapter 13

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, June 17, 2020

Hearing Room

5B

1:30 PM

8:19-14502 Andy T. Torres

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(cont'd from 5-20-2020)**

Docket 23

Tentative Ruling:

Tentative for 6/17/20:

There appear to be several points not yet nailed down: 1. Claim #4 of BMW. If the car has been abandoned the plan should either provide for the secured claim by giving up the vehicle or, at the very least, object to the claim on same or similar basis as a secured only, not entitled to payments; 2. rental income, has that been provided for in the calculation of monthly payment?; 3. can the parties agree on proper withholding amount?, or if not, any refund paid to the Trustee under the plan? No tentative.

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Tentative for 4/15/20:

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**United States Bankruptcy Court
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Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

CONT... Andy T. Torres

Chapter 13

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Tentative for 3/18/20:

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Party Information

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Movant(s):

Andy T. Torres

Represented By
Richard G Heston
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

**#3.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 0

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

CONT... Ashley Dawn Conrad

Chapter 13

Tentative for 2/19/20:
Status on missing payments, 341(a) business budget, etc.?

Party Information

Debtor(s):

Ashley Dawn Conrad

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, June 17, 2020

Hearing Room 5B

1:30 PM

8:19-14634 Trinna Mong Trinh Nguyen

Chapter 13

**#4.00 Confirmation of Chapter 13 Plan
(cont'd from 5-20-20)**

Docket 5

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

CONT... **Trinna Mong Trinh Nguyen**

Chapter 13

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/19/20:
Status of delinquencies, mortgage and tax statements, etc.?

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen	Pro Se
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Movant(s):

Trinna Mong Trinh Nguyen	Pro Se
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Trustee(s):

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:19-14637 Shane Alan Magness

Chapter 13

**#5.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 11

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

CONT... Shane Alan Magness

Chapter 13

Party Information

Debtor(s):

Shane Alan Magness

Represented By
Hasmik Jasmine Papian

Movant(s):

Shane Alan Magness

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 17, 2020

Hearing Room 5B

1:30 PM

8:20-10009 Jay Escano and Annie Escano

Chapter 13

**#6.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

CONT... Jay Escano and Annie Escano

Chapter 13

Tentative for 3/18/20:
Trustee's points are well-taken. Deny, absent explanation.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Jay Escano

Represented By
Gary S Saunders

Joint Debtor(s):

Annie Escano

Represented By
Gary S Saunders

Movant(s):

Jay Escano

Represented By
Gary S Saunders

Annie Escano

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10181 Marco Brito

Chapter 13

**#7.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Marco Brito

Chapter 13

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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10203 John S. Deyoe

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

Docket 31

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

John S. Deyoe

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10220 Antonio Vega Benavides

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Antonio Vega Benavides

Represented By
Sunita N Sood

Movant(s):

Antonio Vega Benavides

Represented By
Sunita N Sood
Sunita N Sood
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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10256 Thomas Richard Reynolds

Chapter 13

**#10.00 Confirmation Of The Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 4

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Thomas Richard Reynolds

Chapter 13

Party Information

Debtor(s):

Thomas Richard Reynolds

Represented By
Anerio V Altman

Movant(s):

Thomas Richard Reynolds

Represented By
Anerio V Altman
Anerio V Altman
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10385 Silviano Robles

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 13

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER & NOTICE OF DISMISSAL ARISING FROM DEBTOR'S
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED
5-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silviano Robles	Pro Se
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Movant(s):

Silviano Robles	Pro Se
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Trustee(s):

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10405 Marc Wayne Wright

Chapter 13

#12.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)

Docket 12

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 4-30-20

Tentative Ruling:

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Marc Wayne Wright Pro Se

Movant(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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10454 Jennifer Wu

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jennifer Wu 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 17, 2020

Hearing Room 5B

1:30 PM

8:20-10464 Rosa Elena Melgar Dominguez

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Rosa Elena Melgar Dominguez

Represented By
Richard L. Sturdevant

Movant(s):

Rosa Elena Melgar Dominguez

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10465 David Stuart Powell and Christina Juliet Powell

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 13

*** VACATED *** REASON: OFF CALENDAR - THIS MATTER WAS
HEARD BY JUDGE SMITH

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Stuart Powell

Represented By
Andrew Moher

Joint Debtor(s):

Christina Juliet Powell

Represented By
Andrew Moher

Movant(s):

David Stuart Powell

Represented By
Andrew Moher

Christina Juliet Powell

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10483 Theresa Sanchez Tuckman

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

Tentative for 6/17/20:

It is difficult to determine current status. All plan payments must be current and missing documents provided. Regarding arrearages, was this in the nature of paying the mortgagee on account of taxes advanced on Debtor's behalf? If it was paid to OC taxes directly, this was improper, as it should have been dealt with under the plan. An amended claim should be obtained from the lender either by stipulation or plan objection. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Movant(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Theresa Sanchez Tuckman

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10493 Terry Gonzalez

Chapter 13

**#17.00 Confirmation of Chapter 13 Plan
(cont'd from 5-20-20)**

Docket 17

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/20/20:

The objections of the Trustee and secured creditor are well-taken. There appear to be feasibility questions, and at the very least the amount of arrearages must be correctly observed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Terry Gonzalez

Chapter 13

to use CourtCall and free access for parties who do not have an attorney –
pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily
accessible during the hearing.

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10507 Veronica D. Batang

Chapter 13

**#18.00 Confirmation of First Amended Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 14

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Veronica D. Batang

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Veronica D. Batang

Represented By
Steven A Alpert

Movant(s):

Veronica D. Batang

Represented By
Steven A Alpert
Steven A Alpert

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10538 Mary Bryant

Chapter 13

#19.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 4-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Bryant

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10544 Richard Susag

Chapter 13

#20.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Richard Susag

Represented By
Julie J Villalobos

Movant(s):

Richard Susag

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10611 Bao Dang Le

Chapter 13

#21.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER OF DISMISSAL FOR FAILURE TO FILE SCHEDULES,
STATEMENTS AND/OR PLAN ENTERED 4-27-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bao Dang Le

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10626 Pamela J. Skiles

Chapter 13

#22.00 Confirmation of Chapter 13 Plan
(re-scheduled from 5-20-20 per cohen's office)

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Pamela J. Skiles

Represented By
Christine A Kingston

Movant(s):

Pamela J. Skiles

Represented By
Christine A Kingston
Christine A Kingston
Christine A Kingston
Christine A Kingston
Christine A Kingston

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Pamela J. Skiles

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 17, 2020

Hearing Room 5B

1:30 PM

8:20-10655 Jose Magana

Chapter 13

#23.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jose Magana

Represented By
Scott Dicus

Movant(s):

Jose Magana

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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10657 Kyle Thomas Baldrige

Chapter 13

#24.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Kyle Thomas Baldrige

Represented By
Bert Briones

Movant(s):

Kyle Thomas Baldrige

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10681 April Joy Gonzales Alvarado

Chapter 13

#25.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 4-16-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

April Joy Gonzales Alvarado

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 17, 2020

Hearing Room 5B

1:30 PM

8:20-10686 Margarita Antunez

Chapter 13

#26.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Margarita Antunez

Represented By
Christopher J Langley

Movant(s):

Margarita Antunez

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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10727 Carlos R. Andrade

Chapter 13

#27.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Carlos R. Andrade

Represented By
James D. Hornbuckle

Movant(s):

Carlos R. Andrade

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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10737 Daniel James Sanchez and Lisa Ann Sanchez

Chapter 13

#28.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Daniel James Sanchez

Represented By
Heather J Canning

Joint Debtor(s):

Lisa Ann Sanchez

Represented By
Heather J Canning

Movant(s):

Daniel James Sanchez

Represented By
Heather J Canning

Lisa Ann Sanchez

Represented By
Heather J Canning

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

**CONT... Daniel James Sanchez and Lisa Ann Sanchez
Heather J Canning**

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-10946 Thomas Donald Teeples, Jr.

Chapter 13

#29.00 Confirmation of Amended Chapter 13 Plan

Docket 15

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Thomas Donald Teeples Jr.

Represented By
Christopher P Walker

Movant(s):

Thomas Donald Teeples Jr.

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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-10960 Chad J. Latham

Chapter 13

**#30.00 Confirmation Of The Chapter 13 Plan
(cont'd from 5-20-20)**

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Chad J. Latham

Represented By
Joseph A Weber

Movant(s):

Chad J. Latham

Represented By
Joseph A Weber
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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-11067 Thomas Casey Beales

Chapter 13

**#31.00 Confirmation of Chapter 13 Plan
(re-notice from 5-20-20 per cohen's office 4-23-20)**

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Thomas Casey Beales

Represented By
Anthony B Vigil

Movant(s):

Thomas Casey Beales

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-11068 Celeste Maria Spellmeyer

Chapter 13

**#32.00 Confirmation Of Chapter 13 Plan
(cont'd from 5-20-20)**

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Celeste Maria Spellmeyer

Represented By
Anthony B Vigil

Movant(s):

Celeste Maria Spellmeyer

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-11069 Keith Alan Miles and Jennifer Ann Miles

Chapter 13

#33.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Keith Alan Miles

Represented By
Christopher J Langley

Joint Debtor(s):

Jennifer Ann Miles

Represented By
Christopher J Langley

Movant(s):

Keith Alan Miles

Represented By
Christopher J Langley

Jennifer Ann Miles

Represented By
Christopher J Langley

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Keith Alan Miles and Jennifer Ann Miles

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-11073 William Guyton

Chapter 13

#34.00 Confirmation Of Chapter 13 Plan

Docket 4

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

William Guyton

Represented By
Sundee M Teeple

Movant(s):

William Guyton

Represented By
Sundee M Teeple
Sundee M Teeple
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, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-11143 Atour Sadeh and Linda Sadeh

Chapter 13

#35.00 Confirmation Of Chapter 13 Plan

Docket 7

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Atour Sadeh

Represented By
Sam Benevento

Joint Debtor(s):

Linda Sadeh

Represented By
Sam Benevento

Movant(s):

Atour Sadeh

Represented By
Sam Benevento

Linda Sadeh

Represented By
Sam Benevento

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

CONT... Atour Sadeh and Linda Sadeh

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 17, 2020

Hearing Room 5B

1:30 PM

8:20-11168 Jennifer Wilson

Chapter 13

#36.00 Confirmation Of Chapter 13 Plan

Docket 18

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jennifer Wilson

Represented By
Anerio V Altman

Movant(s):

Jennifer Wilson

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 17, 2020

Hearing Room 5B

1:30 PM

8:20-11235 Felisa Dailey

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

Docket 13

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Felisa Dailey

Represented By
Richard G Heston

Movant(s):

Felisa Dailey

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 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

8:20-11281 Bob R Martinez and Caroline S Martinez

Chapter 13

#38.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Bob R Martinez

Represented By
Alisa Admiral

Joint Debtor(s):

Caroline S Martinez

Represented By
Alisa Admiral

Movant(s):

Bob R Martinez

Represented By
Alisa Admiral
Alisa Admiral

Caroline S Martinez

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, June 17, 2020

Hearing Room 1675

1:30 PM

CONT... Bob R Martinez and Caroline S Martinez

Chapter 13

Alisa Admiral

Trustee(s):

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 17, 2020

Hearing Room 5B

3:00 PM

8:15-11287 Edward Lee

Chapter 13

#39.00 Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c)) Failure to Complete the Plan Within its Terms
(cont'd from 4-15-20)

Docket 52

Tentative Ruling:

Tentative for 6/17/20:

Grant unless the plan is current/completed per its terms.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Grant unless current or resolved by stipulation.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys

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

Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... Edward Lee Chapter 13

to use CourtCall and free access for parties who do not have an attorney –
pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily
accessible during the hearing.

Tentative for 2/19/20:
Grant unless current or other remedy sought.

Party Information

Debtor(s):

Edward Lee

Represented By
Thomas B Ure

Trustee(s):

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 17, 2020

Hearing Room 5B

3:00 PM

8:15-13438 Salvador Manuel Robledo

Chapter 13

**#40.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding
(cont'd from 4-15-20)**

Docket 113

Tentative Ruling:

Tentative for 6/17/20:
Grant unless current. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:
Grant unless current. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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

Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... Salvador Manuel Robledo

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Grant absent explanation or modification motion on file if otherwise current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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, June 17, 2020

Hearing Room 5B

3:00 PM

8:16-10859 Arthur Alvarez

Chapter 13

#41.00 Motion Under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan or Suspend Plan Payments

Docket 48

***** VACATED *** REASON: OFF CALENDAR - WITHDRAWAL OF DEBTOR'S MOTION TO MODIFY OR SUSPEND PLAN PAYMENTS (DOCUMENT NO. 48) FILED 5-12-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arthur Alvarez

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, June 17, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

**#42.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments
(cont'd from 5-20-20)**

Docket 74

Tentative Ruling:

Tentative for 6/17/20:

There was an issue about getting the modification motion on for hearing?
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/20/20:

See modification motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney –

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

Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... **Timothy Dale Cox and Diane Gloria Cox**
pro se or self-represented litigants through April 30, 2020.

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:
Continue to coincide with hearing on the modification motion filed April 2.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

Trustee(s):

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 17, 2020

Hearing Room 5B

3:00 PM

CONT... Timothy Dale Cox and Diane Gloria Cox

Chapter 13

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

Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

#42.10 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan or Suspend Plan Payments

Docket 85

Tentative Ruling:

Tentative for 6/17/20:

Trustee questions whether the loss in income is attributable to the COVID19 pandemic, in which case an extension is suggested per the CARES Act. However, debtor seems to be arguing something different, i.e. loss of a contractor's license. More information on this question is requested. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

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

Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... Timothy Dale Cox and Diane Gloria Cox

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 17, 2020

Hearing Room 5B

3:00 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

**#43.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 4-15-20)**

Docket 40

Tentative Ruling:

Tentative for 6/17/20:

Grant unless the plan payments are brought current or evidence is presented proving that current status. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative 4/15/20:

Grant absent all payments being brought current or suitable explanation of the discrepancy. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, June 17, 2020

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3:00 PM

CONT... **Martin Garcia and Desiree Marie Garcia**
pro se or self-represented litigants through April 30, 2020.

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Status? Is debtor current or not?

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Tentative for 1/15/20:
Is the debtor current, or not? See #37.

Tentative for 12/18/19:
Grant.

Tentative for 11/20/19:
Same.

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... Martin Garcia and Desiree Marie Garcia

Chapter 13

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
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Wednesday, June 17, 2020

Hearing Room

5B

3:00 PM

8:17-12260 Martin Garcia and Desiree Marie Garcia

Chapter 13

#44.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(cont'd from 4-15-20)

Docket 69

Tentative Ruling:

Tentative for 6/17/20:

Status? Debtor was to respond to Trustee's points.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/15/20:

Debtors need to respond to the points made in Trustee's opposition. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... Martin Garcia and Desiree Marie Garcia
pro se or self-represented litigants through April 30, 2020.

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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, June 17, 2020

Hearing Room

5B

3:00 PM

8:17-14634 Kirk P Howland

Chapter 13

#45.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 4-15-20)

Docket 87

Tentative Ruling:

Tentative for 6/17/20:

Grant unless current or modification motion on file. Appearance is optional.

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Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... Kirk P Howland

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Grant unless current or motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

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**

Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

8:18-10860 Jose Navarro

Chapter 13

#46.00 Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c) for failure to make plan payments.
(cont'd from 4-15-20)

Docket 86

Tentative Ruling:

Tentative for 6/17/20:

Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

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**United States Bankruptcy Court
Central District of California
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Wednesday, June 17, 2020

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3:00 PM

CONT... Jose Navarro

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Grant unless current or modification motion on file.

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Party Information

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, June 17, 2020

Hearing Room 5B

3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

**#47.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 5-20-20)**

Docket 58

Tentative Ruling:

Tentative for 6/17/20:

Continue to coincide with modification hearing. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 5/20/20:

Grant unless current. Appearance is optional.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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3:00 PM

CONT... Lazaro Madrid Manzo

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
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Wednesday, June 17, 2020

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3:00 PM

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

Chapter 13

**#48.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 4-15-20)**

Docket 65

Tentative Ruling:

Tentative for 6/17/20:

Grant unless completely current. Appearance is optional.

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Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

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**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 17, 2020

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3:00 PM

CONT... Chales Drew Simpson and June P Simpson

Chapter 13

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, June 17, 2020

Hearing Room 5B

3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#48.10 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c)) (failure to make plan payments)
(cont'd from 4-15-20)

Docket 32

Tentative Ruling:

Tentative for 4/15/20:

Grant unless current or modification on file. Appearance is optional.

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Tentative for 3/18/20:

Same, status?

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**United States Bankruptcy Court
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3:00 PM

CONT... **Annelize Ladage**

Chapter 13

Tentative for 2/19/20:
Same.

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Annelize Ladage

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

8:18-13740 Kathy-Jo Marie Lamm

Chapter 13

#49.00 Motion For Turnover To Debtor Of Funds Held By Chapter 13 Trustee

Docket 66

Tentative Ruling:

Tentative for 6/17/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Kathy-Jo Marie Lamm

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
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Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

8:19-14344 Maria De Lourdes Chavez

Chapter 13

#50.00 Objection To Claim filed by Exeter Finance LLC c/o AIS Portfolio Services LLC
(cont'd from 3-18-20)

Docket 27

***** VACATED *** REASON: OFF CALENDAR - WITHDRAWAL OF
DEBTOR'S OBJECTION TO CLAIM NO. 7-1 AND REQUEST TO TAKE
OFF CALENDAR FILED 6-01-20**

Tentative Ruling:

Tentative for 3/18/20:

1. There is a question about proper service inasmuch as the address requested by the creditor 4515 N. Santa Fe Ave, Oklahoma City... was not used in favor of addresses in Texas.
2. There is little or no admissible evidence.
3. The debtor engages in supposition such as:
 - a. because she did not take possession, she cannot be responsible... really is that what co-signing or guaranty means?
 - b. the creditor "wrote off" the debt. What, this means the debt is erased?
 - c. the value of the vehicle was more than the balance owed, ergo creditor got paid in full. Really? While this might be true it would be more illuminating if we knew what the foreclosure sale yielded, rather than rely on debtor's hearsay speculations. For example, what was the condition of the auto when it was repossessed? Continue to fix notice.

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**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

CONT... Maria De Lourdes Chavez

Chapter 13

Party Information

Debtor(s):

Maria De Lourdes Chavez

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
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Wednesday, June 17, 2020

Hearing Room 5B

3:00 PM

8:20-10737 Daniel James Sanchez and Lisa Ann Sanchez

Chapter 13

#50.10 Motion For Order Disallowing Proof Of Claim #4 Of TitleMax of California, Inc.
d/b/a TitleMax

Docket 20

Tentative Ruling:

Tentative for 6/17/20:

The motion misses the mark. An interest rate on a proof of claim is not the same thing as a cramdown rate for plan purposes. But that's not how the motion reads. The court evaluates the proper interest rate in order to yield "present value" of the stream of payments, which must be an amount not less than the secured claim to be confirmable. It is not proper to fix a rate of interest different from the contract rate in a vacuum, merely as part of allowance inquiry, but only as part of plan confirmation. In practical terms based on the information given the interest is capped at the value of the vehicle unless §1325(a)(9) hanging paragraph applies, but even in that case the present value analysis trumps any contractual accrual of interest. In any case, the rate is not 3.25% (alleged prime) as this borrower would not qualify for a prime rate loan, but rather some increment above that under the principles announced in Till. Rather than waste yet more time and resources, the court will fix the cramdown rate at 5% (prime plus 1.75) absent other evidence or information. But this only works for an otherwise confirmable plan.

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**United States Bankruptcy Court
Central District of California
Santa Ana
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3:00 PM

CONT... Daniel James Sanchez and Lisa Ann Sanchez

Chapter 13

Party Information

Debtor(s):

Daniel James Sanchez

Represented By
Heather J Canning

Joint Debtor(s):

Lisa Ann Sanchez

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
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Hearing Room 5B

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#51.00 Confirmation of Chapter 13 Plan
(cont'd from 4-15-20)**

Docket 48

Tentative Ruling:

Tentative for 6/17/20:

This has been continued for a considerable period but progress seems minimal or nonexistent. Nothing was filed by debtor as of 6/11, yet the Trustee's specific points appear to be left unaddressed. Convert to Chapter 7?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/15/20:

Debtor may have presented enough (barely) to overcome the "regular income" question, but the Trustee's other points remain to be addressed; (1) what about the 3d TD Diversified (2) Ford lease (3) evidence on monthly expenses and reasonableness of same (4) evidence of residence value for best interest of creditors question.

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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CONT... Charles Ragan Peyton, III

Chapter 13

to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:
See #51

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Charles Ragan Peyton III

Represented By
Richard G Heston
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#52.00 Objection to Claim of Homestead Exemption
(cont'd from 4-15-20)**

Docket 69

Tentative Ruling:

Tentative for 6/17/20:
Same tentative as announced April 15. Objection overruled.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:
Same as 2/19/20.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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3:00 PM

CONT... Charles Ragan Peyton, III

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:

This is the Trustee's objection to the debtor's enhanced claim of homestead under CCP §704.730(a)(3)(B) against the property commonly known as 80 Gingerwood, Irvine, CA.

The Debtor filed a voluntary chapter 7 petition on January 17, 2019. On the filing date, Debtor indicated on his Schedule I that he was employed but temporarily disabled and that he was receiving State Disability Income (SDI) in the amount of \$1,026.29 per month. He indicated that he did not expect an increase or a decrease in income within the year after filing. On this original filing, Debtor claimed a homestead exemption of \$100,000.

According to Debtor's testimony, he returned to work in mid-May. In the beginning of October, he amended his Schedules I and J and disclosed that he was no longer receiving disability, that he was employed as a chain store merchandizer, and that he had a monthly net income of \$835.21. On the same day he amended his Schedules, Debtor filed a motion to convert the case to chapter 13, which went uncontested. There is an underlying implication that the conversion was self-serving inasmuch as the Chapter 7 trustee reportedly showed some signs of interest in selling the Gingerwood property. But we have no real evidence of improper motive such as in *Marrama v. Citizens Bank*, 549 U.S. 365 (2007).

In early December, Debtor amended his Schedules I and J again. On his amended Schedule I, Debtor indicated that he was still employed but added that he was again temporarily disabled and recorded income only from state disability. On his amended Schedule J, he disclosed that he had a negative net monthly income of \$292.80. A few weeks after amending his Schedules I and J, Peyton amended his Schedules A, B, and C. He indicated

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CONT... **Charles Ragan Peyton, III**

Chapter 13

that the value of his property increased, and he changed his homestead exemption to \$175,000. Debtor claimed this increased exemption under CCP § 704.730(a)(3)(B), which requires that a Debtor must be mentally or physically disabled and unable to engage in substantial gainful employment. The Trustee has filed a timely objection.

1. The Debtor Was Permitted to Amend His Schedules

First, we must determine if the Debtor was even able to amend his Schedules. A debtor may amend his petition, list, schedule or statement at any time before the case is closed. FRBP. 1009(a). This is liberally construed, and a debtor does not need court approval before amending his schedules. *In re Michael*, 163 F.3d 526, 529 (9th Cir. 1998). There does not seem to be any dispute whether Debtor was entitled to amend his Schedules, the conflict is whether he can claim this enhanced homestead exemption.

2. The Debtor Has the Burden of Proving He is Entitled to the Exemption

There is confusion in the papers over who has the burden of proof when a debtor claims an exemption. Debtor argues that the Trustee bears the burden of proving the homestead exemption was not properly claimed. This argument is consistent with FRBP 4003(c). The rule in the Ninth Circuit had been that a debtor's claimed exemption is presumptively valid and the party objecting to a debtor's exemption has the burden of proving that the claimed exemption is improper. *In re Carter*, 182 F.3d 1027 (9th Cir. 1999).

However, new authority has shifted this burden. The Supreme Court has held, after the ruling in *Carter*, that state law governs substance claims and burden of proof is substantive given its importance to the outcome of cases. *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000). The Ninth Circuit, interpreting the ruling of *Raleigh*, found that the burden of proving state law

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CONT... **Charles Ragan Peyton, III**

Chapter 13

exemptions should be governed by the appropriate state law. *In re Diaz*, 547 B.R. 329 (9th Cir. BAP 2016). The court in *Diaz* acknowledged the holding in *Carter*, that the burden of proof for claiming exemptions was dictated by federal rule 4003(c), but *Raleigh* was decided after *Carter*. The authority now appears to be that when a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation. *Id.* See also *In re Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); *In re Barnes*, 275 B.R. 889, 898 n.2 (Bankr. E.D. Cal. 2002).

This court adopts the burden of proof outlined in *Diaz* and in accordance with California state law, which dictates the burden of proof is on the party claiming the exemption. Cal Code Civ Proc §703.580. Therefore, Debtor has the burden of proving that the homestead exemption he claimed under CCP §704.730(a)(3)(B) is valid. But is that burden carried?

3. The Preponderance of Evidence Suggests Debtor is Entitled to the Homestead Exemption.

To claim the exemption under CCP §704.730(a)(3)(B) a debtor must be: (1) physically or mentally disabled and (2) unable to engage in substantial gainful employment. A debtor's entitlement to this exemption is determined based on the facts that existed at the time the bankruptcy was filed. Debtor has provided enough evidence to establish that he does have a mental illness. First, at the time he filed his petition he was on temporary disability and was receiving temporary state disability income. Being on disability suggests that he indeed had some mental or physical illness.

Second, Debtor provided testimony from Dr. Boerlin who claims that Debtor suffered and continues to suffer from a psychiatric illness. Debtor has been a patient of Dr. Boerlin for several years and Dr. Boerlin's certification as a Diplomate in psychiatry by the American Board of Psychiatry and Neurology seems to qualify him to make this determination. Further, Debtor testified that

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Chapter 13

in January 2019 he was discharged from Northbound, an addiction rehabilitation center, due to the severity of his mental health problems. The Trustee has not provided any evidence indicating that Debtor was not deserving of the state disability income or evidence that Dr. Boerlin's testimony is not credible. Therefore, Debtor has met his burden of proof that he did have a mental disability on the petition date.

The more difficult question is whether Debtor has met his burden of proving the second element, that when the bankruptcy was filed, he was unable to engage in substantial gainful employment. Gainful employment is substantial if it involves significant physical or mental activity and is gainful if it is done for pay or profit, whether or not a profit is realized. *In re Rostler*, 169 B.R. 408 (Bankr. C.D. Cal. 1994). The debtor must be physically, mentally, and emotionally able to work enough hours, at a high enough net wage, to contribute materially to his support. *In re Neff*, No. BAP CC-12-1664-KITAD, 2014 WL 448885 (B.A.P. 9th Cir. 2014).

The Trustee argues that by filing an amended Schedule I asserting employment income in conjunction with the motion to convert, the Debtor is judicially estopped from arguing that he was unable to engage in substantial gainful employment (as of the petition date). These actions are suspicious, and it is possible that he is trying to take advantage of the court by claiming an ability to work at one point and an inability to work at another, whenever it is convenient for him. However, it is also possible that Debtor suffered from a mental illness at the time he filed his petition, attempted to return to work, but was ultimately unable to do so successfully because of his mental illness. The court's concern is to determine Debtor's condition at the time of filing. Returning to work and converting the case to chapter 13, several months after the petition date, is not determinative that Debtor was trying to take advantage of the court or that he was able to engage in substantial gainful employment at the time of filing. Subsequent recovery from a mental illness does not indicate that someone never suffered from a mental illness that prevented them from engaging in substantial gainful employment, particularly

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as here where relapse seems to have occurred.

It should be said that Debtor's arguments are not totally convincing. Debtor argues that because he was on disability at the time that he filed for bankruptcy he was unable to engage in substantial gainful employment. Being on disability may indicate that Debtor was not able to work at Southern Glazers Wine & Spirits however, it does not necessarily indicate that he was not able to engage in *any* type of substantial gainful employment. Receiving disability from one job is not determinative that he cannot have substantial gainful employment elsewhere.

But Debtor also presents Dr. Boerlin's testimony where he claims that Debtor was unable to engage in substantial gainful employment at the date of filing, which is convincing and is largely not rebutted. The timeline of Debtor's and Dr. Boerlin's relationship is concerning. The court is concerned over what Debtor's condition was on the petition date, and although he has been Dr. Boerlin's patient for several years, we are unsure of when Dr. Boerlin last saw Debtor to diagnose him. Dr. Boerlin testifies that since January 2019, Debtor has been suffering from a disability that prevents him from engaging in substantial gainful employment, but when did Dr. Boerlin make this determination? Debtor became Dr. Boerlin's patient most recently starting on February 20, 2019, which is a month after the petition. Considering Debtor was able to return to substantial gainful employment, albeit shorty, only five months after the petition was filed, it would have been helpful to know when Dr. Boerlin last saw Debtor to form his diagnosis.

Further, according to Debtor's testimony, he was a patient at Northbound rehabilitation center in January 2019, where he was supposedly discharged due to his mental illness. Why did Debtor not include any testimony from employees at the rehabilitation center to corroborate his claim?

Neither party's arguments give a clear indication of Debtor's condition on the date of filing, but the facts preponderate in the Debtor's favor. While

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being on disability does not prove definitively that Debtor was unable to engage in any substantial gainful employment, it does suggest mental illness prevented him from doing so. Further, while we do not have the exact timeline, Debtor was under Dr. Boerlin's psychiatric care intermittently for several years and met with him only a month after the filing. The court will defer to Dr. Boerlin's medical expertise as he indicates that Debtor was unable to engage in substantial gainful employment at the filing date because of his mental illness. The Trustee's only real argument is that Debtor is trying to take advantage of the court by claiming at one point he could work so he could get his case converted to chapter 13, but is now claiming that he was unable to work so he can claim this homestead exemption. While this inconsistency is noteworthy, it not enough to overcome Debtor's evidence. It is not inconceivable that he was unable to engage in substantial gainful employment on the date of the petition, attempted to go back to work and converted his case to chapter 13, but ultimately had to go back on disability as his relapsed illness overtook him. Evidence of being on disability at the time of filing and the testimony from the seemingly qualified Dr. Boerlin persuades the court, on balance, that at the date of filing Debtor was unable to engage in substantial gainful employment, thus fulfilling the second element of the exemption.

Overrule

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-13419 Diane Weinsheimer

Chapter 13

**#53.00 Confirmation of Chapter 13 Plan
(con't from 4-15-20)**

Docket 2

Tentative Ruling:

Tentative for 6/17/20:

Continue one last time to July 15 to coincide with objection to claim scheduled for July 15, 2020 @ 3 p.m. Debtor must be current on the two plan payments overdue. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Continue to July 15 at 3:00PM to coincide with claim objection hearing. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys

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CONT... Diane Weinsheimer Chapter 13

to use CourtCall and free access for parties who do not have an attorney –
pro se or self-represented litigants through April 30, 2020.

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accessible during the hearing.

Tentative for 2/19/20:
Status?

Tentative for 1/15/20:
Status? See #56.

Tentative for 11/20/19:
Is resolution of #58 a precondition to confirmation?

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.

Tentative for 8/21/19:
Evidentiary hearing on claim objection is being continued by stipulation?

Tentative for 5/29/19:

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CONT... Diane Weinsheimer
Same.

Chapter 13

Tentative for 4/17/19:
Is a resolution of claim objection (see #43) necessary before confirmation?

Party Information

Debtor(s):

Diane Weinsheimer

Represented By
Bruce D White

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-11327 Heather Huong Ngoc Luu

Chapter 7

#1.00 Motion For Relief From The Automatic Stay UNLAWFUL DETAINER:

**SUMMIT INVESTMENT GROUP FUND-EUCLID, LLC
Vs.
DEBTOR**

Docket 18

Tentative Ruling:

Tentative for 6/23/20:
Grant. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Heather Huong Ngoc Luu

Represented By
Joshua R Engle

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:17-11524 Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 4-29-20)**

U.S. BANK NATIONAL ASSOCIATION

Vs

DEBTORS

Docket 55

Tentative Ruling:

Tentative for 6/23/20:
Same as before, grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/29/20:
Grant, absent a stipulation. Debtors are not privileged to default on confirmed plans in the hope that they can get further concessions, and so,

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CONT... Cheryl A. McCoy and Bryan Anthony McCoy Chapter 13

the mere unanswered request for a stipulation, even if true, is not a basis for denying the motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Cheryl A. McCoy

Represented By
Anerio V Altman

Joint Debtor(s):

Bryan Anthony McCoy

Represented By
Anerio V Altman

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-11227 Yudy Saidaly Canales

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 4-29-20)**

DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR

Docket 43

Tentative Ruling:

Tentative for 6/23/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/29/20:
Grant. Appearance is optional.

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CONT... Yudy Saidaly Canales Chapter 13

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Yudy Saidaly Canales

Represented By
Brian J Soo-Hoo

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-12629 Eduardo Meza

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**WILIMINGTON TRUST, NA
Vs.
DEBTOR**

Docket 78

Tentative Ruling:

Tentative for 6/23/20:

The court takes a very dim view of post confirmation defaults. This is a form of "cause" within the meaning of §362(d)(1) so insurance or equity are only among several considerations. Grant absent plan being brought current or stipulated APO. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Eduardo Meza

Represented By
Michael F Chekian

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CONT... Eduardo Meza

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

8:20-11188 Coby Lynn McDonald and Marianne Gallagher McDonald

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**HILLDUN CORPORATION
Vs
DEBTORS**

Docket 22

Tentative Ruling:

Tentative for 6/23/20:
Grant. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Coby Lynn McDonald

Represented By
Michael N Nicaastro

Joint Debtor(s):

Marianne Gallagher McDonald

Represented By
Michael N Nicaastro

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CONT... Coby Lynn McDonald and Marianne Gallagher McDonald

Chapter 7

Movant(s):

Hilldun Corporation

Represented By
Brian T Harvey

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

Chapter 7

#6.00 Motion To Dismiss Bankruptcy For Debtors Violations Of 11 USC Section 152(1)(2)(3)(7)(8)(9), 18 USC Section 157 (1), 11 USC Section 554 (d), 11 USC Section 541(a)(2)(A), 11 USC Section 707(a)(1), 3(A) Bankruptcy Procedure Rule 9011(a)(b)(1) (De

Docket 122

Tentative Ruling:

Tentative for 6/23/20:

In this motion creditor Joseph Samec asks that the bankruptcy case be dismissed. Although drawn on the caption of an adversary proceeding it is not at all clear that is what was intended, since the requested relief pertains to the underlying case. The grounds offered are both under title 18 (bankruptcy crimes) as well as under sections 541, 554 and 707 of Title 11. Of these only 11 U.S.C. § 707 can be said to have much relevance. Title 18 contains definitions of what can be prosecuted as crimes, but movant does not establish his standing. It would seem prosecution is the domain of the U.S. Attorney. Section 541 has little relevance as this section only establishes what is regarded as property of the estate. Section 554 governs abandonment of property of the estate and has no relevance to what movant is seeking here. Section 707 governs when a case should be dismissed or converted. This at least has some relevance to the motion. The moving papers contain a list of exaggerated or missing creditors, lawsuits pending but not mentioned, possible assets not accounted for, and generally an allegation that the bankruptcy is filed in bad faith. No evidence is offered unless the court could construe the entire motion as a declaration, since it is offered under oath. Finding missing assets or dealing with misrepresented creditors, is usually the province of the appointed Chapter 7 trustee, in this case, Thomas Casey. Or, these alleged omissions and misrepresentations could form the basis of an order denying discharge under §727(a)(2),(3),(5) etc., but that needs to be the subject of an adversary proceeding timely(?) brought by Mr. Samec (or maybe the trustee), not whatever this is. The court suggests that he retain counsel if he is serious about pursuing these issues.

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CONT... **Guy S. Griffithe**
Deny.

Chapter 7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-10526 LF Runoff 2, LLC

Chapter 7

#7.00 Trustee's Motion for Order Approving Stipulation Between Estate And Plutos Sama Holdings, Inc. for Guaranteed Minimum Funding into the Estate

Docket 168

Tentative Ruling:

Tentative for 6/23/20:
Grant. Appearance is optional.

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The Parties are reminded to have all relevant filings/information easily accessible during the 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

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8:19-12052 Deborah Jean Hughes

Chapter 7

#8.00 Motion To Vacate Previous Order For Relief Of Automatic Stay In Favor Of Arbitration Dated April 3, 2020 And Reinstate Stay

Docket 95

Tentative Ruling:

Tentative for 6/23/20:

Since apparently the creditor does not oppose the motion, provided some conditions are met, such as payment of fees, the court needs to hear just exactly how this matter would unfold here. This court is not an arbitration service. The court would require, at a minimum, that the issues be properly teed up in an adversary proceeding drafted with the jurisdiction of this court on "core matters" in mind. Is this about debtor's discharge at this point? Is this to be an action by debtor to obtain damages for breach of contract and fraud against Seligman relating to the sale of the business? If the latter, there is a standing question as normally litigation on property of the estate is vested in the trustee. This matter is something of a procedural mess and so the court requires the parties to think through these points and clarify procedure before this court will entertain hearing the litigation of the matter. Otherwise, why isn't this just about Seligman filing a proof of claim, and if the debtor objects, turning that into a contested matter? Discharge is a different thing altogether and needs to be brought as an adversary proceeding.

No tentative.

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CONT... Deborah Jean Hughes

Chapter 7

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:10-10310 Robert A. Ferrante

Chapter 7

#9.00 Secured Creditor Estate Of Late William L. Seay (U.S.M.C. (R.E.T.))'s Motion For Order Requiring Accounting, Restoration Of Unauthorized Payments, And Adequate Protection

Docket 623

***** VACATED *** REASON: CONTINUED TO 7-21-20 AT 11:00 A.M.
PER ORDER GRANTING MOTION TO STAY THE SEAY ESTATE'S
MOTION FOR ORDER REQUIRING ACCOUNTING, RESTORATION
OR UNAUTHORIZED PAYMENTS AND ADEQUATE PROTECTION OR
IN THE ALTERNATIVE FOR A CONTINUANCE ENTERED 6-08-20**

Tentative Ruling:

- NONE LISTED -

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 Voegelé
Brendan Loper
Cathrine M Castaldi

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8:18-13608 Darren Dean McGuire

Chapter 7

#10.00 Motion for: (1) Approval of the Settlement between the Trustee and Darren Dean McGuire; and (2) an Order Revoking any Technical Abandonment of the Broker Claims
(cont'd from 6-02-20 per order approving stip. entered 5-20-20)

Docket 118

***** VACATED *** REASON: CONTINUED TO 7-07-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
RE: OPPOSED MOTION TO APPROVE COMPROMISE PENDING
APPROVAL OF SETTLEMENT AGREEMENT ENTERED 6-01-20**

Tentative Ruling:

- NONE LISTED -

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
Jason B Komorsky

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8:20-10441 Scot Matteson

Chapter 7

#11.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against an Individual
(cont'd from 5-20-20 per order approving fourth stip. to cont. status hrg entered 5-12-20)

Docket 1

***** VACATED *** REASON: CONTNUED TO 8-11-2020 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION TO CONTINUE
STATUS HEARING AND TO EXTEND TIME TO FILE RESPONSE TO
INVOLUNTARY PETITION FILED BY ELIZABETH NIGRO &
ASSOCIATES, APC ENTERED 6-09-20**

Tentative Ruling:

Tentative for 3/10/20:

The timing in this case is muddled because two summons were issued and the deadline to respond to the reissued summons is after the hearing on the status conference in this case. It might be best to continue this status conference to March 17, 2020 at 10:00 a.m. so that the court can evaluate any response that is filed. If no response is received, the order for relief should be entered.

Party Information

Debtor(s):

Scot Matteson

Pro Se

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

Tuesday, June 23, 2020

Hearing Room 5B

11:00 AM

6:20-14155 Power Bail Bonds, Inc.

Chapter 11

**#12.00 Debtor's Emergency Motion For Use Of Cash Collateral And To Pay PrePetition Payroll And Employee Benefits
(OST Signed 6-18-20)**

Docket 6

Tentative Ruling:

Tentative for 6/23/20:

The court has reviewed the opposition and it can be summarized as Lexington's strong doubt that debtor has a viable business, and so it urges the court not to allow use of cash collateral as a way of putting the debtor to a proverbial death. Even if a valid concern that should be the subject of a different motion, either one to dismiss or to convert. The court's task today is narrower i.e. to determine whether the creditor is adequately protected in its use of cash proceeds of receivables, against which Lexington holds a lien, for a finite period. In this both pleadings are lacking. The court presumes that debtor is still writing new bonds in that it has arrangements with other insurance companies so that the pool or receivables remains relatively constant. Is that the case? If the whole argument is that there is enough in the pool of receivables to cover Lexington even if no new bonds are written, even allowing for a poor realization rate, that should be plainly stated. Better explanation is needed by what is meant in debtor's offer of adequate protection confining the lien to new collateral obtained with proceeds of old collateral in which Lexington's lien exists. What does that mean in this business context?

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Tuesday, June 23, 2020

Hearing Room 5B

11:00 AM

CONT... Power Bail Bonds, Inc.

Chapter 11

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Power Bail Bonds, Inc.

Represented By
Douglas A Plazak

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#1.00 Motion For Order Approving Settlement Term Sheet Between the Debtor, Robert J. Hall and Placentia Development Company, LLC

Docket 221

Tentative Ruling:

Tentative for 6/24/20:

This is a Rule 9019 motion to approve a "Term Sheet" settlement with the major creditor, Placentia Development Company ("PDC"). It is unopposed. In summary, the terms are that all of the debtor's property will be ceded to PDC (and supplemented by a cash contribution from Mr. Hall, debtor's principal) as full satisfaction of not only PDC's claim but the estate's avoidance powers as well. Debtor makes the obvious point that this is a very challenged case, with the court having already expressed skepticism whether a dismissal or conversion should not be ordered. If debtor in this motion specified what happens next with this case, the court missed it. But, given poor alternatives, it would seem dismissal is the only thing that would make any sense. But absent from the analysis is what happens to any of the other creditors? Some discussion has already occurred suggesting that PDC has bought or is process of buying all the claims. If that is true and has been completed, there is no issue. If, however, any unsecured creditors are being isolated and abandoned, with no means of ever recovering anything, then the court has an issue. The parties have to then persuade the court that viewed from the narrow viewpoint of such a creditor, a conversion would not be a better solution, since at least there would be a trustee who might take a shot at trying to make something of the avoidance powers, or wait on an appeal or renegotiating.... something. This may not be a big issue in dollar terms, but it is big on principle.

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

CONT... Bridgemark Corporation Chapter 11

appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#2.00 Motion For An Order Approving An Extension Of The Courts Deadline File A Plan And Disclosure Statement By One Hundred Twenty (120) Days

Docket 61

Tentative Ruling:

Tentative for 6/24/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Rafik Youssef Kamell

Represented By
Robert P Goe

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

#3.00 Motion For An Order Disallowing Proof Of Claim No. 2 (As Amended) Filed By Department Of Treasury - Internal Revenue Service Against Visiblegains, Inc (cont'd from 3-25-20 per order approving stip. to cont. hrg entered 3-20-20) (cont'd from 5-13-20 per order approving fourth stip. to cont. hrg entered 5-08-20)

Docket 85

***** VACATED *** REASON: CONTINUED TO 7-22-20 AT 10:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION TO CONTINUE
HEAIRNG ON MOTION FOR AN ORDER DISALLOWING PROOF OF
CLAIM NO. 2 ENTERED 6-23-20**

Tentative Ruling:

- NONE LISTED -

Party Information

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, June 24, 2020

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#4.00 Individual Debtor's First Amended Disclosure Statement In Support Of Plan Of Reorganization

Docket 324

Tentative Ruling:

Tentative for 6/24/20:

The U.S. Trustee's objection was not timely, but Debtor still responded. So, the court will assume away the procedural issues. In response to the UST's objection: Debtor filed an amended plan (mistakenly entered as an amended disclosure statement) on June 16. Debtor also filed a separate response directly addressing the concerns identified in the UST's objection. This response includes additional proposed language that, if ultimately adopted into the plan, would likely address the UST's comments. As of this writing on (6/24), the UST has not filed anything further. No other interested party has filed a response of any kind to the DS.

The DS itself is not particularly user friendly as it does not have a table of contents, nor any accompanying brief to make the document easily navigable. Furthermore, while most of the required disclosures can be found in some form in the DS, it seems to be missing background information such as Debtor's financial history and events leading up to filing the petition. The DS has several exhibits: but the exhibits lack explanations of what they are and how they fit into the proposed plan of reorganization.

Debtor states that all disputes have been resolved, aside from the IRS and Citizens Bank Claims, which the newly added language in the proposed plan purports to address. Debtor states that the plan will pay 100% of the allowed creditor claims. When the UST commented on the DS, the court very likely would have found the DS to have inadequate information. The proposed additional language would, if ultimately adopted, likely satisfy the UST's concerns, and the court's.

Although the DS could benefit from additional background information about

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

Wednesday, June 24, 2020

Hearing Room

5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Debtor's case: it may not be necessary. However, the new proposed language should be integrated into the DS. In sum: Debtor's DS is not an easy document to navigate and has some technical Deficiencies, but likely nothing fatal. The UST's objection has been addressed, though the UST may not have had an opportunity to review the proposed changes. No other party in interest has objected or opposed the DS. If the UST does not comment further before the hearing, the DS can likely be approved.

Conditionally approve.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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 24, 2020

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#5.00 Motion to Approve Adequacy of Individual Debtors First Amended Disclosure Statement in Support of Plan of Reorganization

Docket 331

Tentative Ruling:

Tentative for 6/24/20:
Same as #4?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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 24, 2020

Hearing Room

5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

- #6.00** 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 6-04-20)

Docket 1

Tentative Ruling:

Tentative for 6/24/20:

Would the parties prefer this be set for pretrial conference now, or continued as a status conference allowing a second attempt at mediation?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Status? Would ordered mediation help?

Tentative for 12/11/19:
Further status report is needed. For example, IRS is still a defendant.

Tentative for 9/11/19:
Off calendar? See #9

Tentative for 9/4/19:
Does #7 resolve this?

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:

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

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):

DEPARTMENT OF THE
UNITED STATES OF AMERICA

Pro Se
Represented By
Jolene Tanner

Plaintiff(s):

Ron S Arad

Pro Se

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

**#7.00 Post Confirmation Status Conference
(con't from 3-4-2020)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-22-20 AT 10:00 A.M.
PER ORDER TO CONTINUE ENTERED 3-20-20.**

Tentative Ruling:

Tentative for 3/4/20:
Continue for further status conference in about 120 days.

Tentative for 11/13/19:
Continue status conference approximately 120 days.

Tentative for 7/17/19:
See #2

Tentative for 6/17/19:
Status?

Tentative for 5/30/19:
Status?

Tentative for 5/8/19:

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

CONT... Gregory Anton Wahl
See #5.

Chapter 11

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?

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

Party Information

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

Wednesday, June 24, 2020

Hearing Room 5B

10:00 AM

CONT... Gregory Anton Wahl

Chapter 11

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, June 24, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#8.00 Motion Of Debtor To Authorize The Retention And Payment Of Experts Without Further Order Of The Court
(OST Signed 6-19-20)**

Docket 111

Tentative Ruling:

Tentative for 6/24/20:
Absent opposition, grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 6C Calendar**

Wednesday, June 24, 2020

Hearing Room 6C

10:00 AM

6:20-14155 Power Bail Bonds, Inc.

Chapter 11

**#9.00 Debtor's Emergency Motion For Use Of Cash Collateral And To Pay PrePetition Payroll And Employee Benefits
(OST Signed 6-18-20)
(cont'd from 6-23-20)**

Docket 6

***** VACATED *** REASON: TO BE HEARD BY JUDGE WALLACE - jc**

Tentative Ruling:

Tentative for 6/23/20:

The court has reviewed the opposition and it can be summarized as Lexington's strong doubt that debtor has a viable business, and so it urges the court not to allow use of cash collateral as a way of putting the debtor to a proverbial death. Even if a valid concern that should be the subject of a different motion, either one to dismiss or to convert. The court's task today is narrower i.e. to determine whether the creditor is adequately protected in its use of cash proceeds of receivables, against which Lexington holds a lien, for a finite period. In this both pleadings are lacking. The court presumes that debtor is still writing new bonds in that it has arrangements with other insurance companies so that the pool or receivables remains relatively constant. Is that the case? If the whole argument is that there is enough in the pool of receivables to cover Lexington even if no new bonds are written, even allowing for a poor realization rate, that should be plainly stated. Better explanation is needed by what is meant in debtor's offer of adequate protection confining the lien to new collateral obtained with proceeds of old collateral in which Lexington's lien exists. What does that mean in this business context?

No tentative.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 6C Calendar**

Wednesday, June 24, 2020

Hearing Room 6C

10:00 AM

CONT... Power Bail Bonds, Inc.

Chapter 11

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Power Bail Bonds, Inc.

Represented By
Douglas A Plazak

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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

Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

- #1.00** STATUS CONFERENCE RE: Amended Adversary Complaint of Nondischargeability and Exception from Discharge of Debts for Case KC069896 Samec vs. Griffithe et.al.
(cont'd from 4-29-20)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)

Docket 47

Tentative Ruling:

Tentative for 6/25/20:

No status conference report. Was this to be continued ? See #4

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 4/29/20:

See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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

Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:
See #7.

Tentative for 1/16/20:
Same as #1. Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe Et.Al

Pro Se

Plaintiff(s):

Joseph Samec

Pro Se

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

Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

**#2.00 Plaintiff's Motion For Temporary Abstention
(cont'd from 4-29-20)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)**

Docket 38

Tentative Ruling:

Tentative for 6/25/20:

As movant seems to acknowledge, this is not the opportune time to consider abstention. Usually the court strongly considers abstention where the parties have litigated to an advanced stage in state court, even where dischargeability is the question, under the belief that by careful findings and the doctrine of collateral estoppel, duplication can be avoided. That does not seem to be the case here inasmuch as movant admittedly needs to amend his complaint to even allege fraud or other basis that might support non-dischargeability. Consequently, since the litigation is not well along in state court (apparently) there is less reason to abstain from what is a core bankruptcy matter, i.e. dischargeability.

Deny.

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

Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

CONT... **Guy S. Griffithe**

Chapter 7

Tentative for 4/29/20:
Continue to June 25 to coincide with dismissal motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:

This motion is largely indistinguishable from *Bagot v. Griffithe*; 8:19-ap-01201. The adopted tentative ruling from that case, incorporated below, also finds application here, and the motion should be granted. See below.

"Tentative for 3/5/20:

This is the Plaintiff's motion for "Temporary Abstention" and for stay of the pending litigation in favor of a proceeding in Washington State Court. Oddly, the motion is not brought for permissive abstention under 28 U.S.C. § 1334(c) but rather under the court's "inherent power to regulate their dockets and should use it to stay litigation pending resolution of another case or arbitration proceeding where it will dispose of or narrow the issues to be resolved in that litigation." *In re Barney's Inc.*, 206 B.R. 336, 343-44 (Bankr.

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

Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

S.D.N.Y. 1997). As near as the court can determine, the standards are largely the same.

It is well established that a federal court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-707, 117 S. Ct. 1636 (1997); see also *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."); *O'Dean v. Tropicana Cruises International, Inc.*, 1999 WL 335381, *4 (S.D.N.Y. 1999) (federal court suspended action pending disposition of arbitration proceeding); *Evergreen Marine Corp. v. Welgrow International, Inc.*, 954 F.Supp. 101, 103-105 (S.D.N.Y.1997) (authorized stay in federal proceedings pending disposition of related foreign action).

The Ninth Circuit has enumerated factors a bankruptcy court should weigh when it considers whether to permissively abstain from hearing a matter before it. See *Christiansen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990). Those factors include: (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 non-bankruptcy 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

**United States Bankruptcy Court
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Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

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 non-debtor parties.

Plaintiff cites a less exhaustive five factor analysis for suspending or staying a nondischargeability action as follows: (1) The burden of the proceeding on the defendant; (2)The interest of the plaintiff in expeditiously pursuing the action and prejudice resulting from any delay;(3) The convenience of the court in the management of its cases and the efficient use of judicial resources; (4) The interests of non-parties to the litigation; and (5) The interest of the public in the pending civil and criminal litigation. *In re Government Securities Corp.*, 81 B.R. 692, 694 (Bankr. S.D. Fla. 1987). See also, *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 809 (N.D. Cal. 1989).

Although the parties do not agree on which set of factors is correct, the parties do agree that not all of the above factors are applicable nor are they of equal weight. Plaintiff's most persuasive argument for abstention from this court, and one that Defendant does not dispute, is that Plaintiff and Defendant are already heavily engaged in an action in Washington state court. According to Plaintiff, the allegations in the state court action mirror those of the allegations made in this adversary proceeding. Defendant argues that this is a false assertion as there is no mention of anything in the Washington state court action that mirror Plaintiff's §727 claims, although Defendant does concede that Plaintiff's §523 claims are mirrored by the allegations in the Washington state court action. The Washington state court action was filed over a year ago and is reportedly set for trial in April of 2020. Consequently, it seems feasible for the Washington matter to proceed to trial and judgment on the issues underlying the §523(a) claims (and certain of the §727 theories involving pre-petition behavior). Provided that Plaintiff is careful in obtaining detailed and clear findings, Plaintiff can then resolve this

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adversary proceeding under collateral estoppel theories by Rule 56 motion. To the extent that Defendant is correct in his assertion that Plaintiff's §727 claims are not mirrored in the state court action, Plaintiff asserts that he will simply drop those claims as they will likely be unnecessary after the state court rules on the underlying claims. Plaintiff has already obtained relief from stay. Considering the resources that the parties have already expended in Washington, including pre-trial motions, discovery, etc., the parties should likely finish what they started up there. This approach would conserve resources here and would not likely result in duplication of effort.

Concerning the administrative law claims and SEC claims pending in Washington State against Defendant, Plaintiff argues that resolution of these claims will help narrow the issues even further or could even provide additional probative details, which Plaintiff argues is a proper justification for abstention. Defendant argues that these other cases should not be considered for purposes of abstention because they do not directly involve Plaintiff, but this argument is less compelling because Defendant does not attempt to argue that such litigation would not serve to narrow the issues or provide useful additional background. Defendants other arguments against abstention, including the recent withdrawal of Defendant's counsel and a vague argument regarding the purported untimeliness of this motion, do not really move the needle in Defendant's favor. Related to the purported untimeliness of this motion is Defendant's argument that this motion is premature because if Defendant's dismissal motion is granted, then this motion becomes essentially moot. Plaintiff notes that Defendant cites no authority for the proposition that dismissal of the complaint would also end the Washington state court action. Defendant's argument also ignores that complaints after Rule 12 motions can be (and very likely would be) amended if they are found to be defective.

In sum, Plaintiff has made a persuasive case for staying proceedings in this court and allowing the parties to litigate what are largely matters of state

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law in Washington state court, especially since the parties are on the doorstep of trial. Thus, as Plaintiff urges, the court should use its power under §105(a) to temporarily abstain or stay this adversary proceeding pending resolution in Washington state court. Plaintiff is cautioned to obtain clear and dispositive findings on the operative issues such that collateral estoppel can govern in subsequent Rule 56 motion.

Grant abstention. This adversary proceeding is stayed until Plaintiff seeks to return for a Rule 56 motion. The court will schedule a status conference approximately 180 days out for evaluation."

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe Et.Al

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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Adv#: 8:19-01200 Samec et al v. Griffithe

- #3.00** 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.
(cont'd from 3-12-20)(rescheduled from 4-28-2020 at 10:00 per court)

Docket 1

Tentative Ruling:

Tentative for 6/25/20:

No status report. Was this to be continued?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:

See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:
See #9 and 10.

Tentative for 1/16/20:
See #4. The status conference will travel with any motion to dismiss.
Appearance not required.

Tentative for 1/9/20:
Continue to January 16, 2020 at 11:00AM. Appearance optional.

Party Information

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

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Trustee(s):

Thomas H Casey (TR)

Pro Se

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Adv#: 8:19-01200 Samec et al v. Griffithe

- #4.00** Motion To Dismiss Complaint To Determine Dischargeability Of Debt [11 USC § 523(a)(2)(A) and (2)(4)]
(cont'd from 4-29-20)
(rescheduled from 4-28-2020 at 10:00 per court)

Docket 8

Tentative Ruling:

Tentative for 6/25/20:

The analysis seems unchanged since that discussed in the court's tentative from 3/5/20. Consequently, the tentative is adopted and the motion is denied.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:

See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:

This seems largely paralleled to *Bagot v. Griffithe*; 8:19-ap-1201. The adopted tentative ruling in that case is incorporated below. For the same reasons, the motion should be denied. See below.

"Tentative for 3/5/20:

This is the continued hearing on the Defendant's Rule 12(b) Motion to Dismiss. This analysis is divided into two sections. The first section deals with the subject matter jurisdiction issue. The second deals with whether claims for relief have been plausibly stated, sufficient to survive the motion.

I. Subject Matter Jurisdiction

At the hearing on January 16, 2020, because there was only sparse authority on the subject, the court requested supplemental briefing regarding whether this court had subject matter jurisdiction over this adversary proceeding in view of the parties' various connections to the cannabis industry (in violation of the Controlled Substances Act of 1970 ("CSA")). In its tentative ruling, the court summarized and excerpted portions of relevant

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case law and provided its own initial ideas on this narrow issue. That tentative ruling is incorporated herein by reference. Both sides have filed supplemental briefs on the narrow issue identified by the court.

Unfortunately, the supplemental briefing has not provided a definitive answer. Instead, Defendant has, again, cited the case of *Northbay Wellness Group, Inc. v. Beyries*, 2011 WL 5975445 (Bankr.N.D.Cal. 2011), where the bankruptcy court dismissed the debtor's case based on the equitable doctrine of *in pari delicto*. However, as this court noted in its earlier tentative ruling, the Ninth Circuit expressly overruled the bankruptcy court's application of the unclean hands doctrine on grounds that the bankruptcy court failed to properly balance the parties' respective wrongdoings.

In the interim, the court's own research has located case law within the Ninth Circuit that may be useful. In *Mann v. Gullickson*, 2016 WL 6473215 (N.D. Cal. Nov. 2, 2016), the court had to decide whether a contract related to the medical marijuana industry in California was enforceable. The court undertook a comprehensive analysis of the enforceability of contracts containing illegal subject matter. The court noted the specific prohibitions placed on marijuana by the CSA, but also noted that enforcement of contracts containing illegal subject matter resists hard and fast rules. Indeed, the *Mann* court observed that "[s]ometimes the forfeiture resulting from unenforceability is disproportionately harsh considering the nature of the illegality." *Id.* at *6. The court, citing the Ninth Circuit Case of *Bassidji v. Goe*, 413 F.3d 928 (9th Cir. 2005), devised a test of sorts for determining when contracts regarding illegal subject matter may nevertheless be enforceable:

"The Ninth Circuit analyzed federal case law and California precedents... to investigate '[n]uanced approaches to the illegal contract defense, taking into account such considerations as the avoidance of windfalls or forfeitures, deterrence of illegal conduct, and relative moral culpability,' and those considerations 'remain viable in

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federal court and represent no departure from [federal precedent] . . . [so] long as the relief ordered does not mandate illegal conduct.' *Id.* at 937-38." *Mann*, 2016 WL 6473215 at *7.

The *Mann* court also noted that "[t]he federal government's concern over the CSA's medical marijuana prohibition has waned in recent years, and the underlying policy purporting to support this prohibition has been undermined." *Id.* at *9. Noting that several states have legalized marijuana in one form or another, the *Mann* court held:

Given the federal government's wavering policy on medical marijuana in states that regulate this substance, and California's expressed policy interest in allowing qualified patients to obtain medical marijuana, the purported illegality here is not one the Court finds to mandate non-enforcement of the parties' contract. *Id.*

Here, the plaintiff is alleging breach of contract (among other related causes of action) against Defendant in connection with a marijuana concern. The court has already opined on the gross unfairness that would result if Defendant were allowed to use the bankruptcy system as a shield from his alleged misdeeds. The court also notes that, in the event Plaintiff prevails against Defendant in this adversary proceeding, this court would not be forcing either party to engage in illegal conduct. This was a major point raised in *Mann*, i.e. the issuance of a remedy would not necessarily entail a resort to unlawful conduct. Not only does this approach properly involve the balancing of relative wrongdoings as required by the Circuit in *Northbay*, it also harmonizes with the various cases where federal courts refused to become involved at all such as *In re Arenas*, 514 B.R. 887 (Bankr. D. Colo. 2012), because to do so would necessarily require someone to accommodate ongoing breach of the CSA, such as by selling contraband as assets of the estate.

Defendant argues that accepting jurisdiction would require the court to

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intervene proactively and thus improperly in what otherwise would have been Defendant's *carte blanche* ride to discharge. Implicit in this is the argument that the court should leave the wrongdoers where it finds them and only unusual action by the court offensive to the CSA would interrupt Defendant's ride to discharge. But this argument is unpersuasive because it could as easily be looked at another way, i.e. the court would be issuing a change in the status quo by granting the discharge, which is not a right but a privilege, and this action is to determine whether, balancing acts on both sides, that can or should be done consistent with justice. The court is thus persuaded that it *does* have subject matter jurisdiction, or at least that there is no compelling reason on these facts to decide otherwise.

II. Are Claims for Relief Adequately Stated?

Plaintiff's complaint alleges claims for relief under 11 U.S.C. §727(a) (2), (3), (4), (5), (6), (7) and (12), as well as under 11 U.S.C. §523(a)(2), (4), and (6) (10 causes of action in total). By this motion, Defendant seeks dismissal of all causes of action.

A. 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

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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.*

B. Alleged Factual Background

Defendant-Debtor Guy S. Griffithe is an individual who, at all times pertinent hereto, owed a fiduciary duty to Plaintiff Steven Bagot, among others, who "invested" in his companies. Defendant-Debtor allegedly made fraudulent verbal and written statements to solicit "investments" into SMRB, LLC, a Washington State licensed marijuana producer/processor business, and was a signatory to allegedly fraudulent documents underlying the non-bankruptcy litigation in Skagit County Superior Court Case No. 18-2-00544-29 and King County Superior Court Case No. 19-2-00772-9 SEA. Plaintiff provided no less than \$650,000.00 to the Defendant through his alter-ego entity (Renewable Technologies Solutions, Inc. ("RTSI")) for the benefit of SMRB, LLC. When Plaintiff sued to recover his "investment" and damages for Defendant-Debtor's alleged wrongful conduct, the Defendant-Debtor filed the relevant bankruptcy action as well as this motion to dismiss.

On January 9, 2019, Mr. Bagot filed a complaint with the King County Superior Court Case No. 19-2-00772-9 SEA alleging causes of action against

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Defendant-Debtor for fraud, negligent misrepresentation, civil conspiracy, breach of contract, unjust enrichment, conversion, promissory estoppel, breach of the fiduciary duties, breach of the duties of good faith and fair dealing, violations of Washington's LLC disclosure requirements and violations of securities laws. The trial is set for April 6, 2020. The complaint is accompanied by Ex. "A", a report by the Washington State Liquor and Cannabis Board ("WSLCB report"), which provides details of Defendant's alleged misconduct and is heavily referenced in both the complaint and the opposition to this motion. Below the court analyzes how each of the alleged claims for relief fit with this background.

B. §727(a)(2)(A)

This statute provides: "The court shall grant the debtor a discharge, unless— 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— property of the debtor, within one year before the date of the filing of the petition[.]" Plaintiff has sufficiently pled this cause of action in the complaint. Specifically, Plaintiff alleges, with the aid of Exhibit A, that Defendant intentionally transferred valuable property belonging to him which reduced the assets available to the creditors and which was made with fraudulent intent. Plaintiff alleges that Defendant has transferred (to his alter ego entities, Robert Russell, entities owned by Russell, and other entities not known to Plaintiff), removed, destroyed, mutilated, or concealed his property, including the funds provided to him by Mr. Bagot, the oil processing machine, \$1,000,000 million in product from Emerald City Cultivation, and other assets Defendant claims to have utilized (a portion of) these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those

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Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge. Plaintiff also asserts that this conduct occurred within 1-year of the petition date (June 26, 2019) as Plaintiff initiated legal proceedings against Defendant in late spring of 2018.

C. §727(a)(3)

This statute provides: "The court shall grant the debtor a discharge, unless— 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" It is apparent that Plaintiff has adequately made this allegation in the complaint. Specifically, Plaintiff alleges in several places in the complaint the absence of adequate record keeping by Defendant as noted throughout, specifically in regard to Plaintiff's initial investment of \$450,000. Plaintiff also alleges the absence of adequate records related to the purchase of the oil-processing machine and the products purchased from Emerald City Cultivation among other assets. Plaintiff also asserts that he has been attempting to obtain such documentation through discovery without success. Thus, it appears that Plaintiff has adequately alleged that Defendant failed to keep relevant records, and there does not appear to be justification for this failure, taking Plaintiff's allegations as true.

D. §727(a)(4)

This statute provides: "The court shall grant the debtor a discharge, unless— the debtor knowingly and fraudulently, in or in connection with the

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- (A) made a false oath or account;
- (B) presented or used a false claim;
- (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
- (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[.]"

This statute requires that Plaintiff allege: (1) [the debtor] made a statement under oath; (2) the statement was false; (3) [the debtor] knew the statement was false; (4) [the debtor] made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *Matter of Beaubouef*, 966 F.2d 174, 178 (5th Cir 1992). False oaths sufficient to justify the denial of discharge include: (1) a false statement or omission in the debtor's schedules or (2) a false statement by the debtor at the examination during the course of the proceedings. *Id.* at 178; *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir.1999). Plaintiff's complaint, including the exhibits, does allege that Defendant made several intentional false statements relating to the bankruptcy case. For example, Plaintiff alleges that Defendant has failed to report or disclose several assets, including the hundreds of thousands of dollars he took from Plaintiff and never provided to SMRB, LLC. Plaintiff argues, citing *In re Hoblitzell*, 223 B.R. 211, 215-16 (Bankr.E.D. Cal. 1998), for the proposition that a false statement or omission is material even if it does not cause direct financial prejudice to creditors. Therefore, although not presented as clearly as it could be, it appears that Plaintiff has sufficiently alleged that Defendant made false statements under oath by failing to

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disclose several assets known to Defendant in his bankruptcy schedules with an intent to deceive creditors and officers of the court. These specific allegations are likely enough to satisfy the heightened pleading requirements for purposes of Rule 9(b).

E. §727(a)(5)

This section provides: "The court shall grant the debtor a discharge, unless— the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities[.]" Here, Plaintiff's complaint, including the additional detail in the Exhibit, has sufficiently alleged the disappearance of identifiable assets no longer available to creditors, including the funds provided to him by Plaintiff, the (funds available for) purchase and transfer of the oil processing machine, the \$1,000,000 million (per month) in product purchased from Emerald City Cultivation, and other assets Defendant claims to have utilized a portion of these funds to purchase, assets provided to Defendant by other "investors," as well as Defendant's interests in Renewable Technologies Solutions, Inc., Green Acres Pharms, LLC, and SMRB, LLC, among others, and the distributions he receives from those Companies' assets, in addition to other assets which have been concealed, destroyed, transferred without Plaintiff's knowledge.

Defendant does not attempt to explain the loss of these assets, but only points out that the WSLCB report makes no such findings as detailed above. The court notes that the report is lengthy, and the complaint does not make reference to any specific page or paragraph numbers where such information can be easily found. However, in sum, Plaintiff's complaint, which incorporates the WSLCB by reference, does appear to sufficiently allege a cause of action under §727(a)(5), but Plaintiff's complaint could benefit from specific pin cites.

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F. §727(a)(6)

The statute provides: "The court shall grant the debtor a discharge, unless—the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify[.]"

Plaintiff argues that it is undisputed that as stated in the Complaint, in the King County Superior Court litigation, the Honorable Judge McHale entered an Order ordering Defendant-Debtor provide complete responses and documents in response to Mr. Bagot's discovery requests, which were due no later than June 25, 2019, Defendant allegedly failed to comply with this Order. Plaintiff also argues that Defendant did not object on grounds of privilege against self-incrimination or any other ground, Defendant simply refused to comply. Plaintiff asserts that this failure to cooperate resulted in sanctions being imposed, which Defendant apparently has also refused to pay. There is a question whether "the court" as referenced in the statute means the bankruptcy court only, or might it mean another court such as the Kings County Court. But this point is not developed in the papers. Thus, Plaintiff has likely pled sufficient facts to survive the motion to dismiss.

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G. §727(a)(7)

This statute provides: "The court shall grant the debtor a discharge, unless—the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider[.]"

As discussed above, Plaintiff alleges that Defendant committed the acts in (2), (3), and (6) within 1 year of the petition date. Also as discussed above, Plaintiff's complaint alleges various acts of misconduct during the pendency of the bankruptcy case, including knowingly providing false information in his bankruptcy schedules. Again, the question arises whether the malfeasance in another case must be one under Title 11. But the point is not developed so the pleading seems sufficient.

H. §727(a)(12)

This section states: "The court shall grant the debtor a discharge, unless— the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)."

As Plaintiff argues, the complaint details the fraudulent sale of unregistered securities by Defendant, an unregistered security broker/dealer,

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in Defendant's alter ego entities including Renewable Technologies Solutions, Inc. and SMRB, LLC (d.b.a. Green Acres Pharms) (and possibly Green Acres Pharms, LLC, from whom the "Distribution" was paid), as well as his improper conduct while acting in a fiduciary capacity with respect to these dealings and entities. Therefore, Plaintiff has sufficiently pled the first element of this claim. With respect to the second element, there must be pending a proceeding in which the debtor may be found guilty of a felony or liable for a debt of the kind described in §522(q)(1); Plaintiff's complaint provides sufficient details his pending proceeding against Defendant for, among other things, violating State securities laws and relevant disclosure requirements. Thus, this cause of action is likely sufficient to survive the motion.

I. §523(a)(2)(A)

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any 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[.]" The debtor's intent to deceive may be inferred by circumstantial evidence under the 'totality of the circumstances' test. *In re Eashai*, 87 F.3d 1082, 1087 (9th. Cir. 1996). Under the relevant test, the Court "may infer the existence of the debtor's intent not to pay if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor." *Id.*

As discussed above, the complaint provides ample detail of Defendant's alleged fraudulent misconduct including, allegedly making false statements about his companies' financial situations, matters of ownership, etc. in connection with soliciting investment from Plaintiff. Plaintiff points out

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that the WSLCB report made several of these findings, all of which are incorporated into the complaint as an exhibit. In sum, there appears to be sufficiently detailed allegations, taken as true, to satisfy the pleading requirements, including those of Rule 9b.

J. §523(a)(4)

This section provides: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) 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[.]"

For purposes of § 523(a)(4), embezzlement is defined as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269, 16 S. Ct. 294, 295, (1885). Further, as explained in *Murray v. Woodman (In re Woodman)*, 451 B.R. 31 (Bankr. D.Idaho), "an intent to deprive the rightful owner of funds only temporarily and not permanently [does] not negate the element of [fraudulent] intent." *Id.* at 43. "To prevail under § 523(a)(4) for larceny, a creditor must prove that "the debtor has wrongfully and with fraudulent intent taken property from its owner. Larceny differs from embezzlement in the fact that the original taking of property was unlawful, and without the consent of the injured person." *King v. Lough (In re Lough)*, 422 B.R. 727, 735-36 (Bankr. D. Id. 2010). (internal citations omitted)

The complaint appears to allege both embezzlement and larceny while Defendant was acting in a fiduciary capacity. Taking Plaintiff's allegations as true, Defendant obtained money from Plaintiff which he was required to – on two different occasions – provide directly to SMRB, LLC (d.b.a. Green Acres Pharms). Plaintiff alleges that Defendant not only obtained these funds

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unlawfully from Plaintiff, Defendant either never provided Plaintiff's funds to SMRB or improperly removed them and has failed to provide any accounting for these funds or explain their disappearance, without the consent of Plaintiff. Again, taking Plaintiff's allegations as true, Plaintiff does appear to have pled sufficient facts to survive the motion.

K. §523(a)(6)

This section states: "A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title 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[.]" Section 523(a)(6)'s willful injury requirement is met when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002). Plaintiff's complaint is replete with allegations of knowing misconduct, including fraud, breach of contract, breach of fiduciary duty, unjust enrichment, etc. Specifically, Plaintiff alleges that false statements in certain written materials induced Plaintiff to invest Defendant's ventures. Taken as true, the allegations in the complaint are sufficient to satisfy the willfulness portion of the statute.

Courts treat the malicious injury requirement of § 523(a)(6) as separate from the willful requirement. According to *In re Jercich* 238 F.3d 1202, 1209 (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.'" *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002). Plaintiff alleges conduct that, if true, would satisfy the maliciousness portion of the statute. For example, Plaintiff's complaint alleges that Defendant knowingly made material misstatements or omissions the written material provided to Plaintiff, which ultimately allowed Defendant

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to obtain the hundreds of thousands of dollars from Plaintiff. Plaintiff alleges that Defendant knew that the money acquired from Plaintiff had not gone for the benefit of SMRB or to purchase an oil processing machine, and also knew that significant damage to plaintiff would certainly result if the money could not be returned to Plaintiff. The WSLCB report also concludes on page 9 that it appears that the investors taken in by Defendant (Plaintiff among them) were the victims of a fraudulent "Ponzi Scheme." For these reasons, Plaintiff's complaint has sufficiently stated claim under section 523(a)(6).

L. Attorney's Fees Under §523(d)

This section states: "If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust." As should be obvious, none of Defendant's debts have been discharged in connection with the section 523(a)(2) claim as we are still at the pleading stages. Thus, this request for attorney's fees by Defendant is premature and is thus denied.

III. Conclusion

The court does not see a failure of subject matter jurisdiction. The court is persuaded Plaintiff's complaint, though it could be made clearer in places by pin citation to the attached WSLCB report and in a few places raise some dubious theories, does appear to have stated enough for relief under every theory alleged. This is not to say that Plaintiff will succeed on every theory alleged, but simply that the basic pleading requirements have been

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satisfied.

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Deny"

Tentative for 1/16/20:

This is Defendant's Rule 12(b) motion to dismiss these three adversary proceedings. Although there are five dismissal motions on calendar in various Griffithe-related adversary proceedings, these three will be addressed in a single memorandum inasmuch as the issues are identical and, unlike the other two, turn on a question of jurisdiction.

Debtor argues for the first time in his Reply that the Controlled Substances Act of 1970 and several cases addressing the intersection of cannabis and bankruptcy, stand for the general proposition that bankruptcy courts lack subject matter jurisdiction to adjudicate claims relating to cannabis. Subject matter jurisdiction can be raised at any time, but this does not obviate the overarching concern for due process and the court notes that the Plaintiffs have had no effective opportunity to address this fundamental issue. Moreover, the court would value their input on the question as none of the cases cited by Defendant deal directly with the issue before the court and the court is not persuaded that the cited authorities can be read quite so broadly as Defendant argues. The issue here can be framed as whether the bankruptcy court has subject matter jurisdiction in an adversary proceeding where the Plaintiffs seek to have Defendant/Debtor's debts, incurred through alleged malfeasance, adjudicated as nondischargeable despite the underlying cannabis business venture being simultaneously legal under state law and illegal under federal law.

Even though cannabis sale has now been legal in several states for

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several years (while the federal law remains against) the only case cited by Defendant that comes close to addressing this precise issue is *Northbay Wellness Group v. Beyries*, 789 F.3d 956 (9th Cir. 2015). There, an attorney stole money from his client, a legal medical marijuana dispensary, and subsequently filed a Chapter 7 bankruptcy. *Id.* at 958 The dispensary instituted an adversary proceeding seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary complaint under the "unclean hands" doctrine. *Id.* at 959 The Ninth Circuit reversed and remanded, explaining that the bankruptcy court failed to balance the parties' respective wrongdoings as required under that doctrine:

"The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.' [*Johnson v. Yellow Cab [Transit Co.]*, 321 U.S. [383, 387, 64 S. Ct. 622, 88 L. Ed. 814 (1944)]. Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.' *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963). In addition, the 'clean hands doctrine should not be strictly enforced when to do so would frustrate a substantial public interest.' *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991)." *Id.* at 960.

The Ninth Circuit in *Northbay* did not analyze the issue of whether the bankruptcy court had subject matter jurisdiction over the exception to discharge action. Neither the cases cited in the briefs nor any that the court

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has been able to find analyze and/or expressly settle the jurisdiction issue. The closest possible exception that the court has found occurred near the end of the bankruptcy court's original opinion in *Northbay* where the court borrowed the reasoning in a dissenting opinion written by Judge Noonan in another case. The bankruptcy court stated in pertinent part:

"It is very unseemly for the court to be asked to grant relief to a plaintiff which claims it lost its cash from illegal drug sales by shoving it into envelopes and then delivering it to its attorney, uncounted and undocumented. This is hardly the behavior of a legitimate business. While the conduct of the parties may have been legal under state law, in the eyes of a federal court they were conspiring to sell contraband. They were *in pari delicto*, and the funds plaintiffs gave to Beyries were the actual proceeds of illegal drug sales. This is not the sort of case which is supposed to darken the doors of a federal court. See *Adler v. Federal Republic of Nigeria*, 219 F.3d 869, 882 (9th Cir. 2000) (Noonan, Circuit Judge, dissenting)." *In Re Beyries*, 2011 Bankr. LEXIS 4710, *1, *5 (Bankr. N.D. Cal. Nov. 28, 2011)

In another case, *Olson v. Van Meter (In re Olson)*, 2018 WL 989263 *1 (9th Cir. BAP Feb. 5, 2018), the debtor's estate included commercial property that was partially being rented out to a cannabis dispensary. The issue before the court was whether such an estate could confirm a plan under chapter 13. The bankruptcy court dismissed the entire case *sua sponte* on grounds that the debtor had been accepting post-petition rent payments from a cannabis dispensary, and therefore, the debtor was involved in ongoing criminal activity that precluded her from seeking bankruptcy relief. On appeal, the BAP vacated the dismissal on grounds that the bankruptcy court had not made specific findings in connection with the dismissal, and remanded the case for such findings. In a concurring opinion, Judge Tighe stated, "[a]lthough debtors connected to marijuana distribution cannot expect to violate federal law in their bankruptcy case, the presence of marijuana near the case

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should not cause mandatory dismissal." *Id.* at *7.

The court takes the above language to imply that in the canvassing of available case law, and contrary to Debtor's suggestion, the *Olson* court could find no blanket rule that categorically obliterates the bankruptcy court's subject matter jurisdiction simply because cannabis may be involved on some level.

The authorities cited above raise several concerns. The court is uncertain about whether it has subject matter jurisdiction and requires further briefing from the parties; this should be the case in any event given the late raising of the issue. The court is also concerned that if, as Debtor argues, the court lacks subject matter jurisdiction over the dischargeability issue, then Debtor is effectively able to hide behind the bankruptcy process and frustrate the creditors he may have defrauded. Worse still, it is at least conceivable that Debtor could even get his debts discharged despite his own purported wrongful conduct creating those debts. On its face, this result seems to offend the fundamental notions of equity that the bankruptcy court is charged with upholding. Stated differently, perhaps the more applicable maxims of equity here are not only unclean hands but: 'one that seeks equity must do equity', or 'equity will not allow a statute to be used as a cloak for fraud.'

Plaintiffs argue that the relief afforded by bankruptcy law is intended to give a fresh start to the *honest* but unfortunate Debtor. Plaintiffs argue, therefore, that it would be contrary to bankruptcy policy to allow Debtor to discharge his debts to the extent they were incurred by fraud, misrepresentation, breach of fiduciary duty, or some other unsavory means. The court may well agree. Thus, the doctrine of *in pari delicto* seems inapposite in this specific context. In the court's view, gross inequity would result if Debtor could defeat Plaintiffs' complaints based on this court's purported lack of subject matter jurisdiction caused by the underlying illicit activity of *both* Plaintiffs and Debtor, but still avail himself of the protections

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and benefits of the Bankruptcy Code.

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Perhaps the better questions are, should only part of the court's jurisdiction be jeopardized and if so, what part? Consistent with the above, maybe the proper role of equity is to deny discharge entirely on grounds of unclean hands allowing neither side of the illegal transactions to benefit? The problem here is that no adequate briefing has been received on this central question for which authority is apparently sparse.

Continue about 45 days to allow further briefing.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Brenda Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12480 Guy S. Griffithe

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Adv#: 8:19-01200 Samec et al v. Griffithe

**#5.00 Plaintiff's Motion For Temporary Abstention
(cont'd from 4-29-20)
(rescheduled from 4-28-2020 at 10:00 per court)**

Docket 35

Tentative Ruling:

Tentative for 6/25/20:
Is this any different from #2?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:
See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:
See #7. Same as there, and same as in *Bagot v. Griffithe*.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe

Represented By
Baruch C Cohen

Plaintiff(s):

Joseph Samec

Pro Se

Brenda Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

#6.00 STATUS CONFERENCE RE: Complaint Of Creditor For Denial Of Discharge (11 U.S.C. Section 727) And To Determine Nondischargeability Of Debt (11 U.S.C. Section 523(a))
(another summons issued on 1/6/2020)
(cont'd from 3-26-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-30-20 AT 10:00 A.M.
PER HEARING RESULT ON MATTER #8 HELD ON 6-23-20**

Tentative Ruling:

Tentative for 3/26/20:

Status conference continued to June 25, 2020 at 10:00AM for completion of arbitration.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By

Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

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Plaintiff(s):

Adam Seligman

Represented By
Amy Johnsgard

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:18-11155 Kenneth David Bishop

Chapter 7

Adv#: 8:20-01032 Marshack v. Foster

#7.00 STATUS CONFERENCE RE: Complaint for: 1. Avoidance and Recovery of Preferential Transfer; 2. Avoidance and Recovery of Intentional Fraudulent Transfer and; 3. Avoidance and Recovery of Constructively Fraudulent Transfer

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/27/20 AT 10:00 A.M.
PER ORDER GRANTING APPLICATION TO CONTINUE STATUS
CONFERENCE ENTERED 6-12-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth David Bishop

Represented By
Leonard M Shulman

Defendant(s):

Hal Foster

Pro Se

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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8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

#8.00 STATUS CONFERENCE RE: Complaint For: I. Turnover 11 U.S.C. Sec. 542 & 543; II. Avoidance 11 U.S.C. Sec. 544; III. Avoidance 11 U.S.C. Sec. 548; IV. Liability 11 U.S.C. Sec. 550; V. Avoidance 11 U.S.C. Sec. 549; VI. Sale Of Property 11 U.S.C. Sec 363(h); VII. Avoidance 11 U.S.C. Sec. 547

Docket 1

Tentative Ruling:

Tentative for 6/25/20:

Continue approximately 60 days to allow service to be effected.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jee Hyuk Shin	Pro Se
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Defendant(s):

Jee Hyuk Shin	Pro Se
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GODDO SAVE	Pro Se
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Jae Shin	Pro Se
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Bang Shin	Pro Se
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CONT... Jee Hyuk Shin

Chapter 7

Insook Shin	Pro Se
Seafresh Restaurant	Pro Se
Jeemin Shin	Pro Se
Mini Million Corporation	Pro Se
Theodore Ebel	Pro Se
Mojerim, Inc.	Pro Se

Plaintiff(s):

Richard A Marshack	Represented By Anerio V Altman
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Trustee(s):

Richard A Marshack (TR)	Represented By Anerio V Altman
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8:13-20028 Tara Jakubaitis

Chapter 7

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

- #9.00** 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 at s/c held 8-15-19)
(cont'd from 4-29-2020 per order entered 4-16-2020)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-06-20 AT 10:00 A.M.
PER ORDER APPROVING THE STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 6-22-20**

Tentative Ruling:

Tentative for 2/27/20:

This is supposed to be a pre-trial conference. Sadly, it is not that and this is hardly the first time in this series of cases where the court has been sorely frustrated.

As required by the LBRs, the parties were to have met and conferred in good faith to narrow the issues so that trial time could be focused on those items truly in dispute. Local Rule 7016-1 sets forth a very specific timeline and list of duties incumbent on each side. At LBR 7016-1(b)(1)(C) Plaintiff was to have initiated a meet and confer *at least 28 days* before the date set for the pre-trial conference. According to Defendant's papers, this did not occur 28 days before the originally scheduled pretrial conference of Feb. 6, *or indeed at all* until February 13 when Plaintiff reportedly filed his "Pretrial Stipulation" in which he claims it was Defendants who "refused to participate in the pretrial stipulation process" necessitating what is actually a unilateral stipulation. Defendant on the next day, February 14, filed his Unilateral Pretrial Stipulation. Defendant does acknowledge at his page 2, line 1-2 that Plaintiff sent something over to Defendant on January 28, but it was reportedly "not complete in any respect." As to the original date of the

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Pretrial Conference of February 6, that was very late. Whether that document was anything close to what was later filed unilaterally on Feb. 13 is not clarified. But what is very clear is that these two unilateral "stipulations" are largely worthless in the main goal of narrowing issues inasmuch as the parties seem to be discussing two entirely different complaints. Defendant focuses on what the former trustee (now deceased) may have known about the existence of a loan undisclosed on the schedules made by Frank to WeCosign, Inc., which loan was reportedly worthless in any case, and about how that knowledge should be imputed to Plaintiff Marshack. But why the trustee's knowledge, imputed or otherwise, should justify an alleged misstatement or omission to list assets under oath, is never quite explained. One presumes Defendant will argue materiality. Plaintiff focuses on the alleged use of another corporation, Tara Pacific, as the repository of funds taken from WeCosign as an alleged fraudulent conveyance and then used by Frank and Tara as a piggy bank between 2010 and 2012 and upon alleged misstatements in the schedules about Tara's and Frank's actual average income. While this sounds like a fraudulent conveyance theory the gist seems to be that Tara and Frank were using ill-gotten gains to live on while denying in respective schedules that they had any income (or assets) thus comprising a false oath. There probably are connections between these different stories, but that is not made at all clear (and it must be made clear). Plaintiff's overlong "stipulation" is written more like a 'cut and paste' brief containing long tables with over 59 footnotes inserted. One presumes this represents a good faith compilation of bank records, but even that is left unclear. But the language used reads purely as advocacy, not an attempt to narrow the disputed facts in a way the other side can sign.

Buried in the Defendant's recitations (at page 4, ¶ 13) is the argument that the case should be dismissed as outside the statute of limitation (or statute of repose in Defendant's terms) described at §727(e)(1). Why this was not raised 50+ months ago when the action was filed by Rule 12(b) motion or otherwise is not explained. What the Defendant expects the court

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to do with this point now is also not explained.

In sum, this case is still a disorganized mess. This is not the first time the court has voiced its utter frustration with this series of cases. Rather than being ready for trial, we are very much still at the drawing board. The court is not happy about it as this is hardly a young case.

What is the remedy? The court could order sanctions against either side, or maybe both sides, and that would be richly deserved. The court could decide that Plaintiff as the party with the initial duty under the LBRs should suffer the brunt of just consequences by a dismissal, as the ultimate sanction. But however tedious and frustrating this has become the court would rather see these cases decided on their merits (if any) *if that is possible*. But what the court will not do is to further indulge these parties in disobeying the LBRs and generally continuing to shamble along, never getting anywhere. Therefore, **it is ordered**:

1. The parties will immediately meet and confer about reducing the two unilateral 'stipulations' into an intelligible, single, useful list of items not in dispute and therefore requiring no further litigation;
2. The resulting stipulation will be concise, user-friendly and focused on the actual legal issues to be tried;
3. The stipulation will contain a concise list of exhibits to be offered at trial identified by number for Plaintiff and letter for Defendant;
4. The parties will attempt in good faith to resolve any evidentiary objections to admission of the exhibits, and if agreement cannot be reached, state concisely the reasons for or against admissibility;

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5. The stipulation will contain a list of witnesses to be called by each side, with a very brief synopsis of the expected testimony;
6. All factual matters relevant and truly in dispute will be listed, by short paragraph;
7. All legal issues to be decided will be separately listed, by paragraph;
8. Any threshold issues such as Defendants argument about statute of repose will be separately listed along with a suggested means of resolving the issue; and
9. Both sides will estimate expected length of trial, mindful that the court requires all direct testimony by declaration with the witnesses available at trial for live cross and re-direct.

In sum the parties are to do their jobs. If the court's order is not followed *in enthusiastic good faith, and completely* with the goal of narrowing the issues, and if the resulting product is not a concise, user-friendly joint pretrial stipulation, the offending party or parties will be subject to severe sanctions which may include monetary awards and/or the striking or either the complaint or answer.

Continue about 60 days to accomplish the above.

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.

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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
discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can
be set.

Tentative for 5/4/17:
Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines
make sense at this juncture given the ongoing disputes over even
commencing discovery?

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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

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

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

Thursday, June 25, 2020

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

Chapter 7

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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

Thursday, June 25, 2020

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

#10.00 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 1-14-2021 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
HEARING ENTERED 6-23-20**

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.

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.

Party Information

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
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Thursday, June 25, 2020

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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
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Thursday, June 25, 2020

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 Contempt Against PODS Enterprises, LLC for their Failure to Comply with a Subpoena and Issuance of Sanctions, against PODS Enterprises, LLC in the Amount of \$2,175.00

Docket 547

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION FOR CONTEMPT AGAINST PODS
ENTERPRISE, LLC FILED 6-24-20**

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
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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
Central District of California
Santa Ana
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Thursday, June 25, 2020

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11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01002 Richard A Marshack in his capacity as Chapter 7 Tr v. Olga Shabanets, as

#12.00 Creditor Remares Global, LLC Motion To Allow It To Intervene in Adversary Proceeding

Docket 43

Tentative Ruling:

Tentative for 6/25/20:

Two very similar motions brought by the same party in two different adversary proceedings. These are the motions under Rule 24 of Remares Global LLC ("Remares") to intervene. The oppositions are also nearly identical. Because there are no meaningful differences in either the facts or applicable law, they are combined in this single memorandum. The adversary proceedings in question are:

- 1) Richard A. Marshack, in his capacity as Chapter 7 Trustee v. Olga Shabanets as trustee of the 2012 Irrevocable Trust Agreement of Igor Shabanets etc. (8:20-ap-01002);
- 2) Richard A. Marshack, in his capacity as Chapter 7 Trustee v. Rock Star Beverly Hills, LLC et al (8:20-ap-01023)

Both motions are opposed by the chapter 7 trustee, Richard Marshack ("Trustee").

Basic Background

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11:00 AM

CONT... Igor Shabanets

Chapter 7

The background facts do not appear to be substantively disputed.

The Olga Shabanets Adversary Proceeding

This adversary proceeding is to recover about \$3 million in cash and securities (the "Funds") debtor Igor Shabanets ("Debtor") allegedly fraudulently transferred to his "2012 Irrevocable Trust Agreement of Igor Shabanets dated 11/12/2012" In April 2019, Remares obtained a \$10,314,112.97 judgment ("Judgment") against Debtor in Florida. Remares recorded a Certificate of Lien and caused a levy to be served upon Merrill Lynch, Pierce, Fenner & Smith, Inc. ("ML") which then froze the Funds. Remares then domesticated its Judgment in California and caused Debtor to be served with an Order to Appear for Examination ("ORAP"), and again levied on the Funds at ML. In August 2019, Remares further filed and served the Trust with a fraudulent transfer action in state court to recover the Funds (the "Trust Avoidance Action").

As part of the ML levy, the state court ordered ML to deposit the Funds with the State Court. Prior to depositing the Funds, however, Debtor filed his bankruptcy petition. Remares then removed the Trust Avoidance Action to the bankruptcy court which created this Adversary Proceeding. Thereafter, Remares filed a motion to cause ML to deposit the Funds with the bankruptcy court which was granted causing ML to deposit \$3,033,215.05. On April 2, 2020, the Trustee substituted into the Adversary Proceeding. In response, the bankruptcy court terminated Remares as a party to the Avoidance Action. In late April 2020, Remares learned it was no longer a party.

The Rock Star Adversary Proceeding

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CONT... Igor Shabanets

Chapter 7

In April 2019, Remares obtained a judgment against Debtor in Florida. Remares then domesticated its Judgment in California. On May 13, 2019, Remares caused an abstract of judgment ("Abstract") to be recorded with the Orange County Recorder's Office which placed a lien on 2 Monarch Cove, Dana Point, CA ("2 Monarch"). Five months after Remares recorded its abstract, Debtor allegedly fraudulently transferred 2 Monarch to Rock Star Beverly Hills, LLC ("Rock Star"). Pursuant to California Code of Civil Procedure ("CCP") § 697.390, Remares' Abstract still encumbers 2 Monarch despite the transfer to Rock Star. As a result, in November 2019 Remares filed and served Rock Star and Debtor with a fraudulent transfer action in state court to void the transfer of 2 Monarch to Rock Star (the "Rock Star Avoidance Action"). Prior to obtaining a judgment in the Rock Star Avoidance Action, however, Debtor filed his bankruptcy petition. Remares then removed the Rock Star Avoidance Action to the bankruptcy court which created this Adversary Proceeding.

As noted above, in April, Trustee was substituted into this adversary and Remares was terminated as a party.

The Declaratory Relief Adversary Proceedings

On May 8, 2020, Remares filed a complaint against the Trustee, Debtor, and Rock Star, seeking declaratory relief regarding the validity, priority, or extent of an alleged lien on the 2 Monarch property. This initiated adversary proceeding number 8:20-ap-01078. Also on May 8, 2020, Remares filed a complaint against the Trustee, Debtor, and Ms. Shabanets, seeking declaratory relief regarding the validity, priority, or extent of alleged lien(s) on certain funds deposited with the Court in this case, initiating adversary proceeding number 8:20-ap-01079.

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Reasons for Intervention

Remares seeks to intervene in both adversary proceedings to ensure that the wording of any judgment would specifically note that the transfers were both void *ab initio* as opposed to simply "avoided" as the Trustee requests. Remares argues that the wording of the judgment is of great importance, and that Trustee's preferred wording would be detrimental to Remares' interests.

Remares' Standing

The Trustee's primary argument presents a threshold issue, one of Remares' asserted lack of standing to intervene in both matters. Specifically, Trustee asserts that "an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017). The "irreducible constitutional minimum" of standing, as explained by the Supreme Court, has three elements: "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)

Here, Trustee argues that Remares is seeking different relief from that sought by Trustee, and therefore, must demonstrate its standing to intervene as a matter of right, which it has failed to do. First, Trustee argues that the debtor-in-possession wholly displaced Remares as the real-party-in-interest to pursue fraudulent transfer claims of the Debtor when the Debtor filed his voluntary petition for bankruptcy, as those claims became property of the Estate. Cf. *Capriati Construction Corp. v. SPER, Inc. (In re Capriati Construction Corp.)*, 2018 WL 1404439 (B.A.P. 9th Cir. 2018) ("The trustee's standing to sue on behalf of the estate is exclusive; a debtor's creditors cannot prosecute [fraudulent transfer claims] belonging to the

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estate absent abandonment."); see also *Hanlin v. Frazer (In re Vandevort)*, 2009 Bankr. LEXIS 4535 at *17 (B.A.P. 9th Cir. 2009). Trustee then argues that when the Trustee was appointed following the conversion to Chapter 7, the Trustee displaced the debtor-in-possession as the real- party-in-interest to pursue the fraudulent transfer claims. Trustee argues that he has exclusive standing to pursue fraudulent transfer claims belonging to the Estate, leaving Remares without any independent basis or standing to intervene in this adversary action.

In reply, Remares concedes that Trustee is currently the only party-in-interest, but that Trustee's conclusion that Remares lacks standing is erroneous. Remares argues "[s]tanding is determined at the time of the lawsuit's commencement, and we must consider the facts as they existed at that time the complaint was filed[.]" *Skaff v. Meridien N. Am. Beverly Hills, LLC*, 506 F.3rd 832, 850 (9th Cir. 2007). Here, Remares argues, there is no dispute Remares had standing at the time it filed the state fraudulent transfer action against Debtor because it had a judgment against Debtor.

Remares argues that the filing of the bankruptcy petition did not cause Remares to lose its standing. A creditor who files a prepetition fraudulent transfer action does not lose standing when a trustee substitutes in. See *Unisys Corp. v. Dataware Prods., Inc.*, 848 F.2d 311, 313-14 (1st Cir. 1988). The "prepetition standing of a creditor plaintiff is not 'lost' but rather its rights are superseded unless and until claims are abandoned under section 544[.]" *In re Vandervort*, 2009 WL 7809927, pg. 6 (BAP 9th Cir. 2009).

Remares' cited authorities do not obviously and conclusively establish its standing. For example, *Skaff* was not a bankruptcy case and is factually quite dissimilar. Nothing in *Skaff* can be explicitly interpreted to mean that when an adversary proceeding commences, a party with prepetition claims or even a judgment has automatic standing to intervene, especially when there is a chapter 7 trustee involved. Similarly, *Unisys*

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Corp. did not discuss standing. In fact, the word "standing" does not appear at all in the opinion. Thus, Remares' citation to that case is of very limited value. Finally, Remares' citation to *Vandervort*, an unpublished opinion, does offer some guidance, but not necessarily in Remares' favor. It is probable that Remares' reliance on this case stems from the first portion of the quote above where the court observes that "prepetition standing of a creditor plaintiff is not 'lost'[".] This could be taken to mean that Remares did not lose its standing, but the problem is the second half of the sentence where the court clarifies that such a creditor's rights are superseded unless and until the claims are abandoned under section 544, which clearly Trustee has not done. Thus, Remares' standing to bring this motion for intervention is somewhat uncertain. Perhaps the right balance is to say that Remares' did not lose its standing, only that, at present, Trustee's exclusive right to pursue the fraudulent transfer actions supersedes that of Remares.

Intervention Standards

FRCP 24, made applicable in bankruptcy proceedings through FRBP 7024, provides for two types of intervention: (1) intervention of right and (2) permissive intervention. Remares argues that it should be entitled to intervention of right under FRCP 24(a)(2), and argues that permissive intervention is appropriate.

FRCP 24(a)(2) provides: "[o]n timely motion, the court must permit anyone to intervene who: ... (B) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." An applicant for intervention of right is required to show that: (1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its

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Igor Shabanets

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interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest. *U.S. v. Alisal Water Corporation*, 370 F.3d 915, 919 (9th Cir. 2004); *U.S. v. City of Los Angeles, California*, 288 F.3d 391, 397 (9th Cir. 2002). The party seeking to intervene bears the burden of showing that all requirements for intervention have been met. Courts are guided primarily by practical and equitable considerations, and the requirements for intervention are broadly interpreted in favor of intervention. *Alisal Water*, 370 F.3d at 919.

All four conditions for intervention as a matter of right are analyzed below:

Significant Protectable Interest Relating to The Action

Remares argues that as a result of its liens through the (i) Lien Certificate, (ii) Florida Writ, (iii) California Writ, (iv) ORAP, and (v) Notice of Judgment Lien, and (vi) the abstract of judgment Remares has significant protectable interests in the Funds and 2 Monarch. Remares argues that it previously filed these actions in state court so that it could cause the transfers to be "void *ab initio*" and for the court to determine that its liens have a higher priority than any other involuntary liens. Thus, as a secured creditor Remares argues it has a significant protectable interest in the Funds which are the subject of the litigation.

Moreover, Remares argues that creditors in Remares' position have an interest in actions impacting recoveries for creditors' claims in a case. See *Matter of Munford, Inc.*, 115 B.R. 388,389 (Bankr. N.D. Ga 1990) (holding that a creditors' committee had a right to intervene in a substantive consolidation action because it "could materially affect" the creditor's ability to collect on their claims). Thus, Remares argues that it has an interest in both the Funds and 2 Monarch, and so it has a protectable interest in the actions.

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Trustee reiterates that the relief to be obtained in avoiding such a transfer is exclusively within the Trustee's control. In other words, Remares has no standing or ability to request any remedy on account of the estate's fraudulent transfer claims. The Trustee's assertion of no standing does not seem to be explicitly supported by the case law, but Trustee's exclusive right to pursue the unabandoned fraudulent transfer claims seems beyond question. Still, it does seem that Remares does have a protectable interest relating to the action. Whether it is a winning position remains, of course, to be determined. But this factor narrowly weighs in favor of Remares.

Practical Impairment

Remares argues that the disposition of the Adversary Proceeding may impair Remares' ability to protect its interest. Again, Trustee's goal of the Adversary Proceeding is to avoid the transfers of the Funds and of 2 Monarch, and to make any judgment worded in such a way as to make it more likely that the Trustee can avoid each of Remares' five liens. Because the Trustee seeks the judgment worded in such a way to help it attack Remares' liens, Remares argues that its interests could be impaired and thus it is entitled to intervene in this Adversary Proceeding.

Trustee cites *United States v. Ballantyne*, 2013 U.S. Dist. LEXIS 125632 at *6-7 (S.D. Cal. 2013), where the court observed that avoidance of a fraudulent transfer will impair or impede a person's ability to protect his interest if the relief granted will leave that person with "no remaining interest" as a result of the avoidance. Drawing a distinction between *Ballantyne* and the present case, Trustee argues that Remares will still have the ability to assert an interest or lien in the Funds and 2 Monarch even if the Trustee prevails in the lawsuit against Ms. Shabanets, the Shabanets Trust, and Rock Star, and obtains a judgment avoiding the transfer of the Funds and 2 Monarch. Remares' remaining interest in the Funds and 2 Monarch is based on its alleged judgment lien and ORAP lien and judgment

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lien, which are not the subject of this lawsuit but is the subject of the Declaratory Relief Adversaries.

As the court sees it, Remares is trying to prevent unnecessary litigation by having a judgment that finds the transfers in question to be void from the beginning rather than simply voidable. The difference is not solely one of semantics in Remares' view because if the judgment holds the transfer voidable, Remares will have to prove the validity of its liens, which will likely result in more litigation. Trustee does not make it clear whether he believes that the Remares liens are, in fact valid. In any case, this factor likely also weighs narrowly in favor of Remares.

Other Parties Will Not Protect Remares' Interests

Remares argues that the existing parties in the Adversary Proceeding will not adequately protect Remares' interests as they are all adverse to Remares. The Trustee's goal is to recover the Funds and 2 Monarch for the bankruptcy estate generally, and to have the judgment worded in a way so as to attack Remares' liens. Other parties, Debtor, Olga and the Trust, and Rock Star will seek that the Court determine there were no fraudulent transfers and/or that the Funds and 2 Monarch are not property of the Estate. Remares, on the other hand, seeks to have the transfers of the Funds and 2 Monarch deemed "void *ab initio*." Thus, all parties are potentially adverse to Remares and none will protect Remares' interest. But Trustee argues that he and Remares have the same ultimate goals in these adversary proceedings, which is to have the two transfers nullified. Trustee asserts that if Remares is seeking a determination regarding the validity, extent, or priority of its lien after judgment is entered in favor of the Trustee, it has filed a separate adversary action seeking such relief, but has no ability to seek that determination in connection with this adversary action. But again, if the wording of the judgment will make a significant difference, and Trustee is dedicated to a finding that the

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Chapter 7

transfers are avoidable, rather than void *ab initio*, then Remares and Trustee appear to be at an impasse where it would be logical for Remares to assume that its rights will not be adequately protected. Thus, this factor also weighs in favor of Remares.

Timeliness

Both parties agree that the motion is timely.

Remares appears to have narrowly carried its burden of demonstrating that it should be allowed to intervene as a matter of right. As the case law seems to suggest, Remares did not lose standing when Trustee was substituted in, Trustee just took precedence over prosecution of the adversary proceedings.

Permissive Intervention

FRCP 24(b)(1)(B) provides that "[o]n timely motion, the court may permit anyone to intervene who: ... has a claim or defense that shares with the main action a common question of law or fact." Here, seemingly by Trustee's own admission, Trustee and Remares would have very similar, if not identical goals in the adversary proceedings. Remares harbors reasonable doubts that Trustee will protect Remares' interests, which could result in unnecessary litigation down the road. The court has an obligation to prevent or discourage unnecessary litigation whenever possible. The dispute that brought about this motion seems like just the kind of issue that could lead to that unwanted end. Thus, in addition to meeting the standards for intervention as a matter of right, Remares has made a case for permissive intervention as an independent ground for granting the motion.

Grant

**United States Bankruptcy Court
Central District of California
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Thursday, June 25, 2020

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11:00 AM

CONT... Igor Shabanets

Chapter 7

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Olga Shabanets, as trustee of the

Represented By
Bruce A Boice

Olga Shabanets

Represented By
Bruce A Boice

Igor Shabanets

Represented By
Bruce A Boice

Merrill Lynch, Pierce, Fenner &

Represented By
Payam Khodadadi

Plaintiff(s):

Richard A Marshack in his capacity

Represented By
D Edward Hays

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
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8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Richard A Marshack, in his capacity as Chapter 7 T v. Rock Star Beverly

#13.00 Creditor Remares Global, LLC Motion To Allow It To Intervene In Adversary Proceeding

Docket 18

Tentative Ruling:

Tentative for 6/25/20:
See #12.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

Plaintiff(s):

Richard A Marshack, in his capacity

Represented By
D Edward Hays

**United States Bankruptcy Court
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CONT... Igor Shabanets

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Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
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11:00 AM

8:17-12900 Harv Wyman

Chapter 7

Adv#: 8:19-01171 NAYLOR v. THE EVERGREEN ADVANTAGE, LLC et al

**#14.00 Motion to Dismiss Complaint Under Rule 12(b)(6)
(cont'd from 5-27-20 entered 5-12-20)**

Docket 66

Tentative Ruling:

Tentative for 6/25/20:

This is Defendant, Bomor Enterprises, LLC's ("Defendant's" or "Bomor's") motion to dismiss Plaintiff, Chapter 7 trustee, Karen Sue Naylor's ("Trustee's") complaint pursuant to Fed R. Civ. P. 12(b)(6). Trustee opposes the motion.

Basic Background Facts

The basic facts as related in Trustee's complaint are as follows:

On or about June 12, 2002, Defendant Ruffin Road Venture Lot 6 ("RRV6") obtained title to the real property commonly known as 3645 Ruffin Road, San Diego California 92123-1845, assigned Assessor's Parcel Number ("APN") 421-380-06-00 ("Property"). In connection with a loan from San Diego County Credit Union ("SDCU") to RRV6, RRV6 executed and delivered to SDCU a promissory note ("SDCU Note") in the principal amount of \$1,600,000.00. The SDCU Note was secured by a deed of trust (the "SDCU Deed of Trust") which was recorded on October 15, 2004, in the Official Records of the San Diego County Recorder's Office as Instrument No. 328843. On or about March 23, 2007, in connection with a loan from The Alliance Portfolio ("Alliance") in the principal amount of \$600,000.00 to RRV6, RRV6 executed and delivered to Alliance a promissory note dated March 23, 2007 (the "Alliance Note"). The Alliance Note is secured by a deed of trust

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which was recorded on March 29, 2007 in the Official Records of the San Diego County Recorder's Office as Instrument No. 2007-0210944 (the "Alliance Deed of Trust").

On or about April 9, 2007, Debtors, Harv and Kim Wyman ("Debtors") acquired a fractional 1/6th interest in the Alliance Note and Alliance Deed of Trust through an assignment of deed of trust dated April 9, 2007 which was recorded on April 11, 2007 as Instrument Number 2007-0244635 in the Official Records of the San Diego County Recorder's Office (the "Wyman Assignment").

On or about April 9, 2007, Edward G. Kopp and Kerstin Kopp Thee, trustors and trustees of the Kerstin Kopp Trust dated 01-02-92 (collectively, the "Kopps") acquired a fractional 2/6th interest in the Alliance Deed of Trust through an assignment of deed of trust which was recorded on April 11, 2007 as Instrument No. 2007-0244636 in the Official Records of the San Diego County Recorder's Office (the "Kopp Assignment").

On or about April 9, 2007, Terrence W. Cooney ("Cooney") acquired a fractional 3/6th interest in the Alliance Deed of Trust through an assignment of deed of trust which was recorded on April 11, 2007 as Instrument No. 2007-0244637 in the Official Records of the San Diego County Recorder's Office (the "Cooney Assignment").

On or about June 17, 2010, Cooney attempted to assign his fractional beneficial interest in the Alliance Deed of Trust to Phoenix Equity Group, LLC ("Phoenix") through an assignment of deed of trust which was recorded on June 17, 2010 as Instrument No. 2010- 03055434 in the Official Records of the San Diego County Recorder's Office (the "Phoenix Assignment").

On or about September 14, 2010, Phoenix attempted to assign a fractional beneficial interest in the Alliance Deed of Trust to Robert F. Bates, Trustee of the Robert F. Bates Family Trust dated 11/29/90, an individual

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CONT... Harv Wyman

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("Bates") through an assignment of deed of trust which was recorded on October 15, 2010. On or about January 13, 2014, Bates attempted to assign a fractional beneficial interest in the Alliance Deed of Trust to Bomor through an assignment of deed of trust which was recorded on July 7, 2014 as Instrument No. 2014-0280296 in the Official Records of the San Diego County Recorder's Office (the "Bomor 1st Assignment").

On or about September 6, 2016, the Kopps transferred their fractional 2/6th interest in the Alliance Deed of Trust to Bomor through an assignment of deed of trust which was recorded on July 31, 2017 ("Bomor Second Assignment"). On or about May 25, 2017, in connection with a loan from The Evergreen Advantage LLC ("Evergreen LLC"), RRV6 executed a deed of trust in favor of Evergreen LLC securing a promissory note in the principal amount of \$2,250,000.00 (the "Evergreen Deed of Trust"). The Evergreen Deed of Trust was recorded on July 31, 2017.

On or about June 15, 2017, Bomor and RRV6 executed an agreement purporting to subordinate the Alliance Deed of Trust to the Evergreen Deed of Trust (the "Subordination Agreement"). The Subordination Agreement provides, in relevant part, that Bomor is the holder of "an 83.34% fractional interest" in the Alliance Deed of Trust. The Subordination Agreement also appears to erroneously name The Evergreen Advantage Management, Inc. ("Evergreen, Inc.") instead of Evergreen LLC as the "Lender" of the Evergreen Deed of Trust. The date that the Subordination agreement was delivered to Evergreen LLC and/or Evergreen Inc. is unknown.

On July 21, 2017 ("Petition Date"), Debtors filed a voluntary Chapter 7 bankruptcy petition ("Petition"). On July 31, 2017, the Subordination Agreement was recorded as Instrument Number 2017-0344182 in the Official Records of the San Diego County Recorder's Office in violation of the automatic stay created by the filing of the Petition. In Schedule A/B which the Debtors filed with the Petition, Debtors disclosed an interest in the Alliance

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Deed of Trust in the amount of \$100,000.00. In Amended Schedule C, Debtors have claimed an exemption in this interest in the amount of \$21,675.00. The Petition, Schedules and Statement of Financial Affairs did not disclose the Subordination Agreement. On August 28, 2017, prior to the Section 341(a) Meeting of Creditors, Plaintiff obtained a copy of a title report that disclosed the Subordination Agreement.

RRV6 has defaulted under the terms of the Alliance Note and Alliance Deed of Trust. As of April 12, 2016, there was and still is due, owing and payable on the Alliance Note the sum of \$1,820,264.05. As the owner and holder of a fractional 1/6th interest in the Alliance Note and Alliance Deed of Trust, Plaintiff argues she is entitled to payment in the amount of at least \$303,377.34.

The Causes of Action

Trustee's complaint alleges three causes of action, as follows:

- 1) **Declaratory relief** pursuant to 28 U.S.C. § 2201, 11 U.S.C. §§ 105, and 362(a): If it was effective after the filing of the Petition, then the Subordination Agreement was an act to obtain possession of and/or exercise control over, or an act to create, perfect, or enforce any lien against Debtors' fractional 1/6th interest in the Alliance Deed of Trust, which is property of the Estate. Plaintiff argues that this would constitute a violation of the automatic stay and that this act would be void ab initio, and Trustee would request a declaration from this court to that effect.

- 2) **To Avoid Post-Petition Transfer** pursuant to 11 U.S.C. §§ 549(a), 550(a), 551): If it was effective after the filing of the Petition, then the Subordination Agreement was a post-petition transfer of Debtors' fractional 1/6th interest in the Alliance Deed of Trust, which is property of the Estate. Such transfer was not authorized under Title 11 of the United States Code or by the Court. Pursuant to 11 U.S.C. section 549(a), therefore, the Trustee may avoid such

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transfer. Because the Subordination Agreement may be avoided as to Debtors' fractional 1/6th interest in the Alliance Deed of Trust pursuant to 11 U.S.C. section 549(a), the avoided interest should be recovered and preserved for the benefit of the Estate pursuant to 11 U.S.C. sections 550(a)(1) and 551.

3) **To Avoid Pre-Petition Transfer** pursuant to 11 U.S.C. § 544(a)(3), Cal. Civ. Code § 3412. Plaintiff is a hypothetical *bona fide* purchaser of Debtors' fractional 1/6th interest in the Alliance Deed of Trust, which is property of the Estate, as of the Petition Date. If it was effective prior to the filing of the Petition, then the Subordination was a pre-petition transfer of this interest. Such transfer is voidable by such a hypothetical *bona fide* purchaser pursuant to California Civil Code section 3412 because the Subordination Agreement was not recorded in the Official Records of San Diego County Recorder's Office as of the Petition Date and, therefore, provided neither constructive nor inquiry notice to such a purchaser under the recording acts. If left outstanding, then this instrument will continue to impair the value of Debtors' fractional 1/6th interest in the Alliance Deed of Trust because this interest will remain subordinated to the Evergreen Deed of Trust. Therefore, Plaintiff requests that this instrument be delivered up and cancelled as to Debtors' fractional 1/6th interest in the Alliance Deed of Trust. Because the Subordination Agreement may be avoided as to Debtors' fractional 1/6th interest in the Alliance Deed of Trust pursuant to 11 U.S.C. section 544(a)(3), the avoided interest should be recovered and preserved for the benefit of the Estate pursuant to 11 U.S.C. sections 550(a)(1) and 551.

Motion to Dismiss 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

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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*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.* Threadbare recitals of elements supported by conclusory statements is not sufficient. *Id.*

Timeliness of Complaint

Bomor argues that the Second and Third causes of action in the

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complaint are barred because the complaint was filed after the expiration of the applicable statutes of limitations. However, Trustee argues that the doctrine of equitable tolling applies in this case, which makes the complaint timely. As noted above, the Second and Third causes of action are brought pursuant to 11 U.S.C. §§549 and 544 respectively. Both of these sections have two-year statutes of limitations. The question is, when did the clock begin running? The answer appears to favor Trustee as the critical documents that give rise to the causes of action were initially concealed by Debtors and did not come to light until August 28, 2017. As will be discussed below, the date of discovery is critical because it gives the plaintiff the benefit of the full statute of limitations period.

Does The Complaint Sufficiently State Grounds For Equitable To Tolling Apply?

Trustee asserts, citing *Milby v. Templeton (In re Milby)*, 875 F.3d 1229, 1232 (9th Cir. 2017), that the doctrine of equitable tolling is "read into every federal statute of limitation." "A litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Id.*

The BAP in *Milby* observed that "[i]n tolling statutes of limitations, courts have typically assumed that the event that "tolls" the statute simply stops the clock until the occurrence of a later event that permits the statute to resume running.'" *Templeton v. Milby (In re Milby)*, 545 B.R. 613, 621 (9th Cir. BAP 2016) *aff'd*, 875 F.3d 1229 (9th Cir. 2017). The BAP then stated that the proper inquiry is not whether the Plaintiff could have brought the claims within the limitations period, but whether the complaint was filed within the limitations period once appropriate tolling is taken into account. *Id.* at 622, citing *Socop-Gonzalez v. Immigration & Naturalization Service*, 272 F.3d 1176, 1196 (9th Cir. 2001). The BAP stated flatly, "A court should not look at

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the trustee's post-discovery diligence when considering whether equitable tolling should be applied." *Id.* at 622. The Ninth Circuit slightly disagreed with the BAP on this point, observing that "Courts may...consider a petitioner's diligence, after an extraordinary circumstance has been lifted, as one factor in a broader diligence assessment." *In re Milby*, 875 F.3d at 1234. However, the Ninth Circuit made clear that "diligence during the existence of an extraordinary circumstance... is the key consideration." *Id.*

Here, Trustee asserts that both main elements for equitable tolling are satisfied by the complaint. Trustee's complaint alleges that Debtors concealed the Subordination Agreement by failing to disclose it in their Petition, Schedules and Statement of Financial Affairs. Trustee also argues that Debtors concealed other critical documents such as the Loan Servicing Agreement. Such concealment, Trustee argues, constitutes an extraordinary circumstance beyond her control that stood in the way of timely filing. Trustee also argues that Trustee's diligence during the period of extraordinary circumstance is beyond question because she obtained a copy of a title report that disclosed the Subordination Agreement a little over a month after the Petition Date and prior to the Section 341(a) Meeting of Creditors. But, Trustee asserts, the title report was only the beginning of the inquiry. On its face, the subordination agreement only affected Bomor's 5/6th interest, there being no mention of Debtors' 1/6th interest.

Bomor urges the court to question why Trustee waited nearly 23 months after discovery of the critical documents to bring the complaint. After all, in *Milby*, the discovery occurred extremely close to the expiration of the applicable statute of limitation, which Bomor argues is a critical factual distinction. But the plainly stated directive articulated by the BAP in *Milby* and subsequent opinion by the Ninth Circuit appears to pour cold water on that argument, mainly that the trustee's post-discovery due diligence is either largely irrelevant or just one minor factor to whether tolling applies. The main idea is that Trustee is entitled to the full statute of limitations period, which

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begins running upon discovery. The court does not know why Trustee elected to wait as long as she did, and nothing in the complaint offers explanation. But the court does not believe that waiting until nearly the end of the limitations period is, by itself, fatal to equitable tolling and no authority cited by Bomor suggests otherwise.

Bomor also argues that Debtor concealing assets is not an extraordinary circumstance in bankruptcy. It is certainly not an uncommon circumstance, but it does seem to be beyond the control of the trustee as there are only a limited number of ways to ensure that the Debtors are forthcoming and honest in their filings, none of them fool proof. Neither party appears to have cited explicit authority that stands for the broad proposition that concealing assets or critical documents generally does or does not qualify as an extraordinary circumstance for purposes of equitable tolling. As this is Bomor's motion to dismiss, the burden falls on Bomor to cite such authority or otherwise convince the court, which it has not done.

Thus, the court is satisfied that the complaint sufficiently alleges that Trustee did not become aware of the critical documents' existence until August 28, 2017, which is when the statutes of limitations would begin to run. The complaint was filed on August 26, 2019, which is within (just barely) the two-year statutes of limitations for actions brought under 11 U.S.C. §§544 and 549. In sum, Plaintiff's Second and Third causes of action are not barred by the applicable statutes of limitations.

This Is Not A Summary Judgment Motion

Bomor's motion reads more like a Rule 56 summary judgment motion rather than simply a Rule 12 motion to dismiss. The motion, opposition, and reply go into rather excruciating detail of law and fact surrounding each cause of action. Indeed, Bomor openly suggests that this motion be treated as a summary judgment motion. The court suggests that if Bomor is serious, then a motion for summary judgment should have been filed. As it is, this is

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simply a motion to dismiss, subject to the standards recited above. Trustee also points out that there is likely still discovery to be completed and, as a technical matter, the motion would have to have been brought on the proper notice required for a summary judgment motion. In any case, the only task before the court is deciding whether the complaint contains allegations, taken as true and viewed in the light most favorable to Trustee as the nonmoving party, to plausibly support the asserted causes of action. That lighter burden is carried.

Trustee's First Cause of Action

Trustee's first cause of action as outlined in the complaint request declaratory relief to the effect that the subordination agreement, if it was effective after the petition date, would constitute a violation of the automatic stay under 11 U.S.C. §362(a), making it void *ab initio*. This section states in pertinent part: "[A] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of . . . (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; (4) any act to create, perfect, or enforce any lien against property of the estate." The complaint states: "If it was effective after the filing of the Petition, then the Subordination Agreement was an act to obtain possession of and/or exercise control over, or an act to create, perfect, or enforce any lien against Debtors' fractional 1/6th interest in the Alliance Deed of Trust, which is property of the Estate." Trustee's complaint argues that there is an actual controversy between the parties as to whether the Subordination Agreement is effective as to Debtors' fractional 1/6th interest in the Alliance Deed of Trust.

This is a very close call. Bomor argues that subordination agreement was executed pre-petition, took effect pre-petition, and was only recorded post-petition to put other parties on notice. Bomor concludes that it could not have violated the automatic stay as a matter of law. Trustee implicitly

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concedes that this might be true, but that discovery will help determine whether the parties intended for the agreement to take effect post-petition. Trustee also argues that certain language in the agreement states that the agreement shall become effective when recorded. What these provisions identified by Trustee mean is a question of fact and their impact on this cause of action will be definitively addressed at a later juncture. Again, the court is only tasked with deciding whether a plausible claim has been stated, with all benefit of the doubt resolved in Plaintiff's favor. If Trustee's allegations are taken as true, it is more likely than not that she has successfully stated a claim for declaratory relief. To be clear, the court is not making any findings of fact at this juncture.

Trustee's Second Cause of Action

Trustee's second cause of action asserts that the subordination agreement constitutes a voidable post-petition transfer pursuant to 11 U.S.C. §§549 and 550. Section 549 states in relevant part: "[T]he trustee may avoid a transfer of property of the estate—(1) that occurs after the commencement of the case; and (2) . . . (B) that is not authorized under this title or by the court." Again, the complaint is worded using contingent language: If it was effective after the filing of the Petition, then the Subordination Agreement was a post-petition transfer of Debtors' fractional 1/6th interest in the Alliance Deed of Trust, which is property of the Estate. Trustee also brings this second cause of action under section 550, which states in relevant part: "Except as otherwise provided in this section, to the extent that a transfer is avoided under section . . . 549 . . . of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made."

Finally, Trustee alleges this second cause of action pursuant to section 551, which states in relevant part: "Any transfer avoided under

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section . . . 549 . . . of this title . . . is preserved for the benefit of the estate but only with respect to property of the estate."

Once again, Trustee's language of the allegations is qualified. "Because the Subordination Agreement may be avoided as to Debtors' fractional 1/6th interest in the Alliance Deed of Trust pursuant to 11 U.S.C. section 549(a), the avoided interest should be recovered and preserved for the benefit of the Estate pursuant to 11 U.S.C. sections 550(a)(1) and 551." Such qualified language makes it difficult to gauge how much Trustee believes in her own claims. But, as the opposition makes clear, much of the viability of Trustee's causes of action depend on what discovery produces in this case. Reading between the lines, Trustee's causes of action depend at least in part on certain assumptions being borne out in discovery. Bomor contends that a subordination agreement does not constitute a transfer at all. However, Trustee cites at least one case where a court opined that a subordination fits within the definition of "transfer." See *Holber v. Jacobs (In re Jacobs)*, 401 B.R. 161, 171 n.13 (Bankr. E.D. Pa. 2009) ("Based on application of the general principles employed by the courts in construing the parameters of the concept of 'transfer' under the Code, I conclude that the Subordination Agreement here effected a transfer. While it may not have been a transfer in the most common and conventional form (e.g., transferring title to property, granting a lien, assigning contractual rights), it nonetheless resulted in the diminution of the Debtor's contractual collection rights[.]") So it seems at the very least that the Subordination Agreement could be considered a transfer, albeit not in the usual sense, but not necessarily inconsistent with the bankruptcy code.

But, without a more complete factual record, the validity of the asserted claims is difficult to assess. So, what to do? The guiding principal in a Rule 12(b)(6) motion requires that a claim only be plausible, not necessarily compelling. Trustee seems to concede that her causes could be vulnerable if her assumptions prove faulty. But again, the claim at this stage

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only has to be plausible on its face to deny the motion. Giving Trustee the benefit of the doubts, the complaint does just enough to meet the plausibility standard.

Trustee's Third Cause of Action

Trustee's third cause of action alleges that the subordination agreement is voidable as a pre-petition transfer pursuant to 11 U.S.C. § 544(a)(3), which state is pertinent part:

"The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by . . . a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists."

This cause of action is also brought pursuant to Cal. Civ. Code §3412, which states in relevant part: "A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled."

Trustee argues that under section 544(a)(3), she is a hypothetical *bona fide* purchaser of Debtors' fractional 1/6th interest in the Alliance Deed of Trust, which is property of the Estate, as of the Petition Date. Trustee asserts that if the Subordination Agreement was effective prior to the filing of the Petition, then the Subordination Agreement was a pre-petition transfer of this interest.

Invoking Cal. Civ. Code. §3412, Trustee argues that such transfer is voidable by such a hypothetical *bona fide* purchaser because the

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Subordination Agreement was not recorded in the Official Records of San Diego County Recorder's Office as of the Petition Date and, therefore, provided neither constructive nor inquiry notice to such a purchaser under the recording acts. Trustee asserts that if left outstanding, then this instrument will continue to impair the value of Debtors' fractional 1/6th interest in the Alliance Deed of Trust because this interest will remain subordinated to the Evergreen Deed of Trust. Trustee then argues that that this instrument must be delivered up and cancelled as to Debtors' fractional 1/6th interest in the Alliance Deed of Trust.

Finally, Trustee concludes that because the Subordination Agreement may be avoided as to Debtors' fractional 1/6th interest in the Alliance Deed of Trust pursuant to 11 U.S.C. section 544(a)(3), the avoided interest should be recovered and preserved for the benefit of the Estate pursuant to 11 U.S.C. sections 550(a)(1) and 551. How that can be squared with the fact that the trust deed as a whole was facing imminent foreclosure, is left to the imagination.

Bomor argues that Subordination Agreement is not voidable under 11 U.S.C. section 544(a)(3) and Civil Code section 3412 because, prior to the Petition Date, Debtors had executed a Loan Servicing Agreement. Trustee argues that this argument is unavailing at this point because the Loan Servicing Agreement constitutes impermissible hearsay, and in any case, the Subordination Agreement could have been avoided by a hypothetical *bona fide* purchaser, such as Trustee. Giving Trustee the benefit of the doubts, as the court must do at the Rule 12 stage, this cause of action is likely enough to withstand the motion, but again, narrowly. Discovery will likely go a long way to deciding whether Trustee can ultimately prove this, or any of the other claims.

Conclusion

This is a very close case. Trustee's complaint seems to be reliant on

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assumption and speculation to a large degree hoping that discovery will validate her theories of the case. However, the court is unable to conclude that her claims wholly lack plausibility because much depends on what information discovery reveals. The court expects that if Trustee is unable to obtain evidence that would support any of her claims, she would simply withdraw those causes of action or amend her complaint as appropriate. Trustee's claims are also likely timely due to the doctrine of equitable tolling, but again, just barely. Although this motion reads very much like a summary judgment motion, it is in fact a motion to dismiss and so the court is only obliged to decide whether Trustee has stated a *plausible* claim for relief, not which party will be ultimately be vindicated.

Deny.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Harv Wyman

Represented By
Thomas J Polis

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Defendant(s):

THE EVERGREEN ADVANTAGE,	Represented By Zi Chao Lin
THE EVERGREEN ADVANTAGE	Represented By Alexa P Stephenson
RUFFIN ROAD VENTURE LOT 6	Pro Se
BOMOR ENTERPRISES, LLC	Represented By D Edward Hays Tinho Mang

Joint Debtor(s):

Kim M. Wyman	Represented By Thomas J Polis
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Plaintiff(s):

KAREN SUE NAYLOR	Represented By William Malcolm
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Trustee(s):

Karen S Naylor (TR)	Represented By Christina J Khil Arturo M Cisneros
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8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

#15.00 STATUS CONFERENCE RE: Complaint by Plaintiff: Estate of William L. Seay against Defendant: Thomas H. Casey, Chapter 7 Trustee (cont'd from 5-06-20 per order on joint stip. re: stay of tp cont. hrg adv. action pending ruling on mtn to withdraw reference and request of cont. pending hearings entered 4-23-20)

Docket 1

***** VACATED *** REASON: COTINUED TO 8-27-20 AT 10:00 A.M.
PER ORDER ON STIPULATION RE: REQUEST TO CONTINUE
INITIAL STATUS CONFERENCE ENTERED 6-22-20**

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

Kathleen J McCarthy

Brendan Loper

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8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

- #16.00** 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 4-29-20)**
(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 1

Tentative Ruling:

Tentative for 6/25/20:
See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be

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arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:
See # 12-14.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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.

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CONT... Richard Paul Herman

Chapter 7

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

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8:17-14117 Richard Paul Herman

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Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

**#17.00 Evaluation Hearing RE: Plaintiff's Motion for Preliminary Injunction
(con't from 4-29-20)
(rescheduled from 4-28-2020 at 11:00 a.m. per court)**

Docket 5

Tentative Ruling:

Tentative for 6/25/20:

Following the hearing on the OSC re: Contempt on April 29, Foothill Financial and Trustee jointly lodged an order on April 30. The official order issued on May 11. Mr. Herman filed an untimely objection to the lodged order.

To accompany his objection to the lodged order, Mr. Herman attached his own proposed order, which bears little resemblance to the actual ruling on the OSC and several other orders issued by this court.

The most consequential rewrite Mr. Herman makes to his proposed order is where he states that per our abstention order, he is allowed to pursue in state court all claims that may belong solely to his wife with no limit on value. This is despite the many orders issued by this court where the specific claims the court abstained from are listed. Foothill's response catalogues the various orders and judgments with the court's very clear language articulating the narrow scope of its abstention.

Mr. Herman appears to have seized upon the most miniscule ambiguity to deliberately disregard the language and spirit of this court's orders in an attempt to reframe his dismissed claims as belonging solely to his wife, thereby allowing him to re-litigate them in state court. Mr. Herman may have already filed a version of his order with the state court. Foothill and Trustee are understandably dismayed by this latest attempt to hinder and delay.

In light of this most recent and fairly egregious transgression, Foothill

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requests that the court now impose monetary sanctions. Foothill suggests that Mr. Herman should pay the fees incurred by Foothill as a result of Mr. Herman's ongoing contempt, which Foothill estimates in its status report at \$7,500.

Mr. Herman has filed his own status report asserting that the contempt order is on appeal and there is nothing else to be adjudicated by this court at this time, all matters now being with the district court.

Mr. Herman is playing with fire. Rather than displaying even a modicum of compunction after being adjudged to be in contempt, Mr. Herman asserts in his objection that his contempt is now purged, and that it never truly existed in the first place. Mr. Herman, we should not forget, is also an attorney, and is presumed to be able to understand court orders and the consequences for disregarding them. Thus, a measured and modest monetary sanction is likely appropriate, with the promise of more severe sanctions to follow if Mr. Herman continues to misconduct himself.

The court requests an update on whether Mr. Herman actually lodged a bogus form of order with the state court. Impose monetary sanctions of \$2000 payable jointly to Foothill and Trustee.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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Tentative for 4/29/20:
See #14.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Tentative for 3/26/20:
What is the status of this portion of the case?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 10/31/19:
It would appear that yet more events limiting this case are under discussion

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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 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

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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 pending state court action, assuming Defendants retained or acquired any rights after signing

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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 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 a result of their eviction of Debtor and his wife. However, Plaintiff points out that

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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 enforceable; (3) Plaintiffs are being forced to spend substantial sums of money mounting a defense

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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 this court?), this court should abstain, pending resolution in the state court action. However, considering the issues discussed above, abstention does not seem

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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

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

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8:17-14117 Richard Paul Herman

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Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

- #18.00** Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay
(set by Order entered 3-18-20)
(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 113

Tentative Ruling:

Tentative for 6/25/20:
See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

- (a) Why he should not be held in contempt for
 - i. his continuing efforts to exercise control over and interfere with the

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dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and

ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.

(b) Why he should not be subjected to the following sanctions:

i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and

ii. Compensatory damages incurred by Foothill and the Trustee as a result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely responses.

Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for

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negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the Trustee has sought damages under 11 U.S.C. § 362(k), but rather this proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted).

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Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2) affirming to the State Court that the only cause of action that the Hermans assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "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) Debtor's "claim 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

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October 17, 2017."

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2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

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Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

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
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10:30 AM

8:19-12320 John Gerard Bolduc

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**ACAR LEASING LTD
Vs.
DEBTOR**

Docket 56

Tentative Ruling:

Tentative for 6/30/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

John Gerard Bolduc

Represented By
Kevin J Kunde

Movant(s):

ACAR Leasing LTD d/b/a GM

Represented By
Sheryl K Ith

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Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith

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8:19-12849 Theresa G Garcia and Angel Garcia

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**BRIDGEST CREDIT COMPANY, LLC
Vs
DEBTOR**

Docket 40

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 6-19-20**

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):

Bridgest Credit Company, LLC

Represented By
Lemuel Bryant Jaquez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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8:19-12849 Theresa G Garcia and Angel Garcia

Chapter 13

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY
RE: [2008 Dodge Ram 1500 2WD V8]

**BRIDGESTER CREDIT COMPANY, LLC
Vs.
DEBTORS**

Docket 42

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 6-19-20**

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):

Bridgester Credit Company, LLC

Represented By
Lemuel Bryant Jaquez
Angie M Marth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

8:18-10215 Isabel Garcia Rainey

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

CITIMORTGAGE, INC.

Vs.

DEBTOR

Docket 50

***** VACATED *** REASON: CONTINUED TO 7-21-20 AT 10:30 A.M.
PER ORDER GRANTING STIPULATION CONTINUING HEARING RE:
MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 USC
SECTION 362 ENTERED 6-26-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isabel Garcia Rainey

Represented By
John Habashy

Trustee(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 30, 2020

Hearing Room 5B

10:30 AM

8:20-10800 Donicka G Markovich

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY

DONICKA G MARKOVICH
Vs.
DEBTOR

Docket 12

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM STAY
FILED 6-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donicka G Markovich

Represented By
Joseph A Weber

Movant(s):

Deseret First Credit Union

Represented By
Dane W Exnowski

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 30, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#6.00 Application For Second Interim Fee Application For Period: 11/13/2019 to 5/31/2020:

**SNELL & WILMER L.L.P. FOR ANDREW STILL, SPECIAL COUNSEL FOR
CHAPTER 7 TRUSTEE**

FEE: \$19,049.50

EXPENSES: \$312.92

Docket 2775

Tentative Ruling:

Tentative for 6/30/20:
Allow as prayed. Appearance optional

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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

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
Andrew Still

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

Tuesday, June 30, 2020

Hearing Room

5B

11:00 AM

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

Chapter 7

#7.00 Sixth Interim Fee Application For Period: 5/30/2019 to 6/3/2020:

HAHN FIFE & COMPANY, ACCOUNTANT:

FEE: \$46,504.00

EXPENSES: \$288.90

Docket 2778

Tentative Ruling:

Tentative for 6/30/20:
Allow as prayed. Appearance optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Anna's Linens, Inc.

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

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong

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
Andrew Still

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#8.00 Seventh Application For Payment of Interim Fees And Expenses For Period:
3/1/2019 to 9/30/2019:

RINGSTAD & SANDERS LLP, TRUSTEE'S ATTORNEY:

FEE: **\$368684.50**

EXPENSES:: **\$3307.81**

Docket 2779

Tentative Ruling:

Tentative for 6/30/20:

Allowed as prayed. Appearance optional. Trustee may disburse as to this and all other awards in her discretion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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

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
Andrew Still

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#9.00 Second Application For Interim Fees And Expenses For Period:
10/12/2019 to 5/29/2020:

McLEOD LAW GROUP, APC FOR JOHN J McLEOD, SPECIAL COUNSEL,

FEE: \$7487.50

EXPENSES: \$0.00.

Docket 2780

Tentative Ruling:

Tentative for 6/30/20:
Allow as prayed. Appearance optional

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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, June 30, 2020

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

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
Andrew Still

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#10.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363 (cont'd from 5-13-20)

Docket 7

Tentative Ruling:

Tentative for 6/30/20:

Status? Continue on same terms another 60 days? When can we see a plan?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/13/20:

This matter is on calendar because permitted use of cash collateral is set to expire as of the hearing per previous order. Nothing further has been filed as of 5/8. Status? The March MOR shows slightly positive cash flow, so, absent objection, the logical order would seem to be continued authority on same terms and conditions for about 60 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

Debtor filed an amended motion for use of cash collateral on 4/1/20. Unfortunately, this amended motion is likely untimely because there is nearly no time for any other party to respond before the hearing date on 4/8. In any case, the new amended motion does not appear to address Banc of California's objections to continued use of cash collateral. Therefore, the amended motion should be continued to allow creditors, including Banc of California, adequate time to respond. In the meantime, Debtor should answer Banc of California's allegations of misusing cash collateral.

Continue for about two weeks on same terms. Debtor to address Banc Of California's points. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:
Continue same terms until April 8, 2020 at 10:00 a.m.

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
Courtroom 5B Calendar**

Tuesday, June 30, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#11.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 50 Filed By Stearns Lending, LLC
(cont'd from 5-27-20 per order approving fourth stip. re: claim no. 50 entered 5-08-20)
(rescheduled from 5-26-2020 at 11:00 a.m per court) 3-20-20)

Docket 248

*** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND STEARNS
LENDING, LLC AND MOTION TO DISALLOW PROOFS OF CLAIM
#50 ENTERED 6-22-20

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, June 30, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#12.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 51 Filed By Lakeview Loan Servicing, LLC (cont'd from 4-07-20) (cont'd from 5-27-20 per ordered approving fourth stip. to cont. hrg. entered 5-08-20)

Docket 249

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
LAKEVIEW LOAN SERVING, LLC AND MOTION TO DISALLOW
PROOFS OF CLAIM #51 ENTERED 6-22-20**

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, June 30, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#13.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 52 Filed By First Federal Bank of Florida (cont'd from 5-27-20 per order ent approving fourth stip. to cont. hrg entered 5-08-20)

Docket 250

*** VACATED *** REASON: CONTINUED TO -11-20 AT 11:00 A.M. PER ORDER APPROVING FIFTH SITPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND FIRST FEDERAL BANK OF FLORIDA AND MOTION TO DISALLOW PROOFS OF CLAIM #52 ENTERED 6-22-20

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, June 30, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#14.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 53 Filed By Lakeview Loan Servicing, LLC (cont'd from 4-07-20) (cont'd from 5-27-20 per order approving fourth stip. to cont. hrg clm. 53 entered 5-08-20)

Docket 251

*** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
LAKEVIEW LOAN SERVICING, LLC AND MOTION TO DISALLOW
PROOF OF CLAIM #53 ENTERED 6-22-20

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, June 30, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#15.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 54 Filed By Lakeview Loan Servicing, LLC (cont'd from 4-07-20) (cont'd from 5-27-20 per order approving fourth stip. to cont. clm # 54 entered 5-08-20)

Docket 252

*** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
LAKEVIEW LOAN SERVICING, LLC AND MOTION TO DISALLOW
PROOFS OF CLAIM #54 ENTERED 6-22-20

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, June 30, 2020

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. 61 Filed By Lakeview Loan Servicing, LLC (cont'd from 4-07-20) (cont'd from 5-27-20 per order approving fourth stip. to cont. hrg entered 5-08-20)

Docket 255

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
LAKEVIEW LOAN SERVICING AND MOITONS TO DISALLOW
PROOFS OF CLAIM #61 ENTERED 6-22-20**

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, June 30, 2020

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. 62 Filed By Nationstar Mortgage LLC D/B/A Champion Mortgage Company
**(cont'd from 4-07-20)
(cont;d from 5-27-20 per order entered 5-08-20)**

Docket 256

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
NATIONSTAR MORTGAGE LLC RE: HEARING ON THE OBJECTION
TO DISALLOW PROOF OF CLAIM NO. 62 ENTERED 6-12-20**

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, June 30, 2020

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 Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
(cont'd from 5-27-20 per order approving fourth stip. to cont. hrg re: claim no. 65 entered 5-08-20)
(rescheduled from 5-26-2020 at 11:00 a.m per court)

Docket 258

Tentative Ruling:

Tentative for 6/30/20:

Serious issues are raised in Lexington's reply, joined by the Trustee. Explanations are required concerning the relationship between the claimant and Mr. Browndorf. Treat as a status conference preliminary to a contested matter/adversary proceeding.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the 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

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

Tuesday, June 30, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

David Wood

Chapter 7

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

Tuesday, June 30, 2020

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. 66 Filed By Statebridge Company, LLC
(cont'd from 5-27-20 per order approving fourth stip. re: claim no. 66 entered 5-08-20)
(rescheduled from 5-26-2020 at 11:00 a.m per court)

Docket 259

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION RE: MOTION TO
DISALLOW PROOF OF CLAIM NO. 66 ENTERED 6-17-20**

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, June 30, 2020

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. 67 Filed By Select Portfolio Servicing, Inc. **(cont'd from 4-7-20 per second stip and order entered 3-20-20) (rescheduled from 5-25--20) per court order) (cont'd from 6-09-20 per fourth stip. order entered 5-14-20)**

Docket 260

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION MOTION TO
DISALLOW PROOF CLAIM NO. 67 ENTERED 6-17-20**

Tentative Ruling:

Tentative for 2/25/20:
See #11

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, June 30, 2020

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. 70 filed by Carrington Mortgage Services, LLC
(cont'd from 4-07-20 per court's own mtn)
(cont'd from 5-27-20 per order approving stipulation re: clm no. 32-2 and clm no.70 entered 5-21-20)

Docket 263

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING THIRD STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
CARRINGTON MORTGAGE SERVICES, LLC AND MOTION TO
DISALLOW PROOF OF CLAIM NO. 70 ENTERED 6-24-20**

Tentative Ruling:

Tentative for 2/25/20:
See #11

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, June 30, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#22.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim
No. 87 Filed By Trust Bank
(cont'd from 4-7-20 per court's own mtn)
(cont'd from 5-27-20 per order entered 5-12-20)

Docket 449

*** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING THIRD STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND TRUST
BANK ADJOURNING THE HEARING ON THE OBJECTIONS TO
PROOFS OF CLAIM NO. 87 ENTERED 6-29-20

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, June 30, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#23.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim No. 88 Filed by Trust Bank
(cont'd from 4-7-20 per court's own mtn)
(cont'd from 5-27-20 per ordered entered 5-12-20)

Docket 451

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 A.M.
PER ORDER APPROVING THIRD STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND TRUST
BANK ADJOURNING THE HEARING ON THE OBJECTIONS TO
PROOFS OF CLAIM NO. 88 ENTERED 6-29-20**

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, June 30, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#24.00 Select Portfolio Servicing, Inc's Objection to and Motion to Disallow or Subordinate Proof of Claim No. 44 filed by Lexington National Insurance Corporation
(cont'd from 4-7-20 per court's own mtn)
(cont'd from 6-09-20 per order approving fourth stip. to cont. entered 5-14-20)

Docket 476

***** VACATED *** REASON: CONTINUED TO 8-11-20 AT 11:00 PER ORDER APPROVING FIFTH STIPULATION RE: MOTION TO DISALLOW PROOF OF CLAIM NO. 44 ENTERED 6-17-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Movant(s):

SELECT PORTFOLIO

Represented By
Lauren A Deeb

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, June 30, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#25.00 Lexington National Insurance Corporation's Motion For Order Compelling Select Portfolio Servicing, Inc. To Produce Settlement Agreement
(cont'd from 5-20-20 per order apprvng fourth stip. on the obj. to an mtn to disallow proofs of claim no. 44 and 67 entered 5-14-20)

Docket 568

***** VACATED *** REASON: OFF CALENDAR - OREDER
APPROVING STIPULATED PROTECTIVE ORDER AND RESOLUTION
OF MOTION TO COMPEL ENTERED 6-01-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Thursday, July 2, 2020

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 11

Adv#: 8:13-01278 Grobstein v. Harkey et al

- #1.00** 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 3-5-2020 per order approving stip. to cont. pre-trial conference and all other dates entered 2-12-2020)

Docket 1

***** VACATED *** REASON: COTINUED TO 10-29-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE AND ALL OTHER DATES ENTERED 6-19-20**

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, July 2, 2020

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.
CalComm Capital, Inc.

Pro Se

Chapter 11

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, July 2, 2020

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

#2.00 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 3-05-20 per order on further stipulation to extend pre-trial dates entered 1-14-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION FOR DISMISSAL OF ADVERSARY PROCEEDING
ENTERED 6-26-20**

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

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

Thursday, July 2, 2020

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Robert P Goe
Jeffrey S Benice
Carlos F Negrete

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

Thursday, July 2, 2020

Hearing Room 5B

10:00 AM

8:17-12406 Elmer Clarke

Chapter 7

Adv#: 8:17-01245 Little v. Clarke

- #3.00** PRE-TRIAL 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)]
(set from s/c held on 3-12-20)

Docket 1

Tentative Ruling:

Tentative for 7/2/20:

Frustrating. This is scheduled as a pretrial conference yet no joint pretrial stipulation is seen although it is required under the LBRs and was the topic of specific warnings given last time. All we have is a somewhat lame "status report" from plaintiff that reports settlement attempts were rebuffed. This is not acceptable and is not an excuse. The lack of progress is doubly concerning since the court is informed that a state court judgment which was to be basis for a Rule 56 motion to be brought by plaintiff has been finally resolved after appeal for months now. So, why no motion? No joint stimulation? Nothing. Defendant has moved to dismiss for these failures. The court will hear argument.

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Thursday, July 2, 2020

Hearing Room 5B

10:00 AM

CONT... Elmer Clarke

Chapter 7

Tentative for 3/12/20:
Status?

Tentative for 9/5/19:
Why no status report? Status of state court matter?

Tentative for 4/11/19:
Why no status report? Status of state court matter?

Tentative for 10/11/18:
Does plaintiff agree that a further delay pending appeal is the best course?

Tentative for 3/8/18:
Why no status report?

Party Information

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

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

Thursday, July 2, 2020

Hearing Room 5B

10:00 AM

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, July 2, 2020

Hearing Room 5B

10:00 AM

8:11-22626 Son Ba Mai

Chapter 7

Adv#: 8:19-01019 Daniel Cham MD v. Mai

- #4.00** PRE-TRIAL CONFERENCE RE: Petition For Removal (28 U.S.C.Section 1452, 1334)
(set per order on exparte application to extend time to respond to discovery request and revised schedule order [docket #40] entered 3-20-20)

Docket 1

Tentative Ruling:

Tentative for 7/2/20:

Continue to coincide with MSJ August 13 @ 2 p.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 8/29/19:

See #22

Tentative for 3/7/19:

Calendar matter #15 is a status conference and hearing on order to

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

Thursday, July 2, 2020

Hearing Room

5B

10:00 AM

CONT...

Son Ba Mai

Chapter 7

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 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).

Party Information

Debtor(s):

Son Ba Mai

Represented By

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

Thursday, July 2, 2020

Hearing Room 5B

10:00 AM

CONT... Son Ba Mai

Chapter 7

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, July 2, 2020

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 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8)
(cont'd from 3-12-20 per order to continue entered 1-8-20)
(cont'd from 5-14-20 per order to continue pre-trial entered 4-07-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-03-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE (1) EXPERT WITNESS
DISCLOSURE DEADLINE; AND (2) PRE-TRIAL CONFERENCE
ENTERED 6-30-20**

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 2, 2020

Hearing Room 5B

10:00 AM

8:19-14307 Roadking Trucking, LLC

Chapter 11

Adv#: 8:19-01223 Roadking Trucking, LLC v. Alvarado et al

**#6.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid Preferential Transfers
Pursuant to 11 USC Section 547
(set from s/c hrg held on 2-27-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - JUDGMENT
ENTERED 4-14-20**

Tentative Ruling:

Tentative for 2/27/20:
Deadline for completing discovery: June 1, 2020
Last date for filing pre-trial motions: June 22, 2020
Pre-trial conference on: July 2, 2020 at 10:00AM
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Roadking Trucking, LLC

Represented By
Christopher J Langley
Donald W Reid

Defendant(s):

Luis Solorzano	Pro Se
Wilber Sandoval	Pro Se
Ricardo Roman	Pro Se
Marco Rojas	Pro Se
Bernardino Rojas	Pro Se
Edson Reyes	Pro Se
Gregorio Ramirez	Pro Se
Mariano Montano	Pro Se

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

Thursday, July 2, 2020

Hearing Room 5B

10:00 AM

CONT... Roadking Trucking, LLC

Chapter 11

Edgar J. Reyes Mendoza Pro Se

Cruz Mendoza Pro Se

Jose Andres Majano Pro Se

Edwin Majano Pro Se

Victor Loasigas Pro Se

Adolfo Hernandez Pro Se

Agustin Gutierrez Pro Se

Rafael Ramos-Funes Pro Se

Carlos Estrada Pro Se

Carlos Delgado Pro Se

Luis Carranza Pro Se

Abner Aparicio Pro Se

Lucy Alvarado Pro Se

Ana Vasquez Pro Se

Plaintiff(s):

Roadking Trucking, LLC

Represented By

Donald W Reid

Christopher J Langley

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

Thursday, July 2, 2020

Hearing Room 5B

11:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

- #7.00** PRE-TRIAL CONFERENCE RE: Complaint For Declaratory Relief Regarding Property Of The Estate Pursuant To 11 USC § 541
(set from s/c hrg held on 12-5-19)
(rescheduled from 5-7-2020 at 10:00 a.m.)
(cont'd from 5-6-20 per order approving stip. to extend dates in modified scheduling order entered 4-23-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-01-20 AT 10:00 A.M.
PER ORDER APPROVING SITPULATION TO AMEND CERTAIN
DATES IN MODIFIED SCHEDULING ORDER ENTERED 6-04-20**

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

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

Thursday, July 2, 2020

Hearing Room 5B

11:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

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

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**

Thursday, July 2, 2020

Hearing Room 5B

11:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw

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

Thursday, July 2, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01041 Marshack v. West Coast Business Capital LLC et al

#8.00 Defendant's West Coast Business Capital, LLC's Motion To Dismiss 12(b)(1)(6)

Docket 27

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT WEST COAST BUSINESS CAPITAL, LLC TO CONTINUE
HEARING ON MOTION TO DISMISS ENTERED 6-18-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Represented By
Michael W Davis

Vernon Capital Group LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
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, July 2, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#9.00 Defendant EBF Partners, LLC's Motion to Dismiss Complaint For Failure To State A Claim For Relief And For More Definite Statement

Docket 79

***** VACATED *** REASON: CONTINUED TO 7-23-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT EBE PARTNERS, LLC TO CONTINUE HEARING ON
MOTION TO DISMISS ENTERED 6-18-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

Yes Funding Corp., a New York

Pro Se

Atlas Acquisitions, LLC, a New

Pro Se

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

Thursday, July 2, 2020

Hearing Room

5B

11:00 AM

CONT...

i.i. Fuels, Inc.

Chapter 7

Capital Stack Fund II LLC, a

Pro Se

New Era Lending, a California

Pro Se

Arch Capital Advisors, Inc., a

Pro Se

CoreFund Capital, LLC, a Texas

Represented By
Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
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, July 2, 2020

Hearing Room 5B

2:00 PM

8:19-13164 Marc Wayne Wright

Chapter 7

Adv#: 8:19-01211 Alexander et al v. Wright

#10.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(6) of the Bankruptcy Code
(cont'd from 1-23-20)
(cont'd from 5-06-2020)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/09/20 AT 2:00 P.M.
PER NOTICE OF CONTINUED STATUS CONFERENCE FILED 5-20-20**

Tentative Ruling:

Tentative for 5/6/20:

Where's the promised summary judgment motion?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/23/2020:

Status conference continued to May 7, 2020 at 10:00 a.m. Court expect motion for summary judgment in meantime.

Party Information

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

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

Thursday, July 2, 2020

Hearing Room

5B

2:00 PM

CONT... Marc Wayne Wright

Chapter 7

Defendant(s):

Marc Wayne Wright

Pro Se

Plaintiff(s):

Zachary Alexander

Represented By
Thomas J Polis

Noah Wright

Represented By
Thomas J Polis

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 7, 2020

Hearing Room 5B

10:30 AM

8:20-11188 Coby Lynn McDonald and Marianne Gallagher McDonald

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**OREGON COMMUNITY CREDIT UNION
Vs.
DEBTORS**

Docket 26

Tentative Ruling:

Tentative for 7/7/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Coby Lynn McDonald

Represented By
Michael N Nicaastro

Joint Debtor(s):

Marianne Gallagher McDonald

Represented By
Michael N Nicaastro

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

Tuesday, July 7, 2020

Hearing Room 5B

10:30 AM

CONT... Coby Lynn McDonald and Marianne Gallagher McDonald

Chapter 7

Movant(s):

Oregon Community Credit Union

Represented By
Sheryl K Ith

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Tuesday, July 7, 2020

Hearing Room 5B

10:30 AM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-16-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 47

Tentative Ruling:

Tentative for 7/7/20:
Grant unless or stipulation for APO.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 6/16/20:
Grant. Appearance is optional.

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

Tuesday, July 7, 2020

Hearing Room 5B

10:30 AM

CONT... Walter Quiroz and Carmen Quiroz Chapter 13

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/6/20:

Same, grant unless APO stipulated. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

Grant unless and APO is stipulated. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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Tuesday, July 7, 2020

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CONT... Walter Quiroz and Carmen Quiroz Chapter 13

appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/25/20:
Grant unless current or APO.

Party Information

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Movant(s):

U.S. Bank National Association

Represented By
Sean C Ferry
Eric P Enciso

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, July 7, 2020

Hearing Room

5B

10:30 AM

8:18-12052 Frank Bowers, Jr.

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-03-20)**

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 88

Tentative Ruling:

Tentative for 7/7/20:

The creditor remains unconvinced that payments are current, judging from the Supplemental Bowers Declaration. Post confirmation defaults are not treated lightly. Grant, absent APO stipulation or more convincing evidence of current status post confirmation.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 6/3/20:

There seems to be a dispute over the status of payments. The debtor is obliged to remain current under the plan and any post confirmation default

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CONT... Frank Bowers, Jr.

Chapter 13

may result in termination of the stay. The parties are urged to meet and confer over the disparities; failing a stipulation, continue for evidentiary hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Frank Bowers Jr.

Represented By
Peter Rasla

Movant(s):

U.S. Bank National Association, not

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, July 7, 2020

Hearing Room 5B

10:30 AM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-10-20)
(rescheduled from 6-9-2020 at 10:30 a.m per court)**

WELLS FARGO BANK
Vs.
DEBTOR

Docket 38

Tentative Ruling:

Tentative for 7/7/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 6/10/20:

Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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CONT... Delia Banuelos De Castillo

Chapter 13

to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/6/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866)

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CONT... Delia Banuelos De Castillo
582-6878.

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Grant unless lender confirms debtor is current or APO.

Party Information

Debtor(s):

Delia Banuelos De Castillo

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, National

Represented By
Kirsten Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, July 7, 2020

Hearing Room 5B

11:00 AM

8:18-13608 Darren Dean McGuire

Chapter 7

#5.00 Motion for: (1) Approval of the Settlement between the Trustee and Darren Dean McGuire; and (2) an Order Revoking any Technical Abandonment of the Broker Claims
(cont'd from 6-23-20 per order approving stip. entered 6-01-20)

Docket 118

***** VACATED *** REASON: CONTINUED TO 8-04-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING RE: MOTION TO APPROVE TRUSTEE'S COMPROMISE
WITH DEBTOR ENTERED 6-23-20**

Tentative Ruling:

- NONE LISTED -

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
Jason B Komorsky

**United States Bankruptcy Court
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Tuesday, July 7, 2020

Hearing Room 5B

11:00 AM

8:19-14245 Tae H Ko

Chapter 7

#6.00 Debtor's Motion For Contempt For Violation Of The Automatic Stay

Docket 61

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF DEBTOR'S MOTON FOR CONTEMPT FOR
VIOLATION OF THE AUTOMATIC STAY FILED 6-18-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tae H Ko

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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Tuesday, July 7, 2020

Hearing Room 5B

11:00 AM

8:19-11330 Fred Conrad Smith and Marilyn Rae Smith

Chapter 7

#7.00 Trustee's Final Report And Application For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE

Docket 39

Tentative Ruling:

Tentative for 7/7/20:

Allow as prayed. Appearance optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Fred Conrad Smith

Represented By
Gregory E Nassar

Joint Debtor(s):

Marilyn Rae Smith

Represented By
Gregory E Nassar

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CONT... Fred Conrad Smith and Marilyn Rae Smith

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 7, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 STATUS CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(order approving stip. to treat hrg on mtn for admin. clm as s/c entered 5-12-20)
(cont'd from 5-27-20)

Docket 571

*** VACATED *** REASON: CONTINUED TO 8-04-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE (1) DATE FOR TRUSTEE TO FILE RESPONSIVE PLEADINGS AND STATUS CONFERENCE HEARING RE: MTN FOR ADMINISTRATIVE CLAIM BY TERRACE TOWER ORANGE COUNTY, LLC ENTERED 6-19-20

Tentative Ruling:

Tentative for 5/27/20:

By stipulation this is treated as a status conference. But no status conference report is filed and the parties have not really informed the court as to how much time is needed for discovery, or what appropriate deadlines would look like.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By

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CONT... BP Fisher Law Group, LLP

Chapter 7

Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Wednesday, July 8, 2020

Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

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 33

Tentative Ruling:

Tentative for 7/8/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Bradley Ray Fox

Pro Se

**United States Bankruptcy Court
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Thursday, July 9, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

- #1.00 STATUS CONFERENCE RE: Complaint For:**
- I. Denial Of Discharge Pursuant To 11 U.S.C. Sec. 727(a)(2-7);
 - II. Turnover Of Real Property Pursuant To 11 U.S.C. Section 542;
 - III. Turnover Of Funds Pursuant To 11 U.S.C. Sec. 542 & 543;
 - IV. Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. Sec. 547;
 - V. Avoidance Of A Preferential Transfer Pursuan To 11 U.S.C. Sec. 548;
 - VI. Avoidance Of A Post-Petition Transfer Pursuant To 11 U.S.C. Sec. 549
- (cont'd from 4-9-20 per order on stip. to cont. s/c entered 3-16-20)
(cont'd from 6-03-20)
(rescheduled from 6-4-2020 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-30-20 AT 11:00 A.M.
PER ORDER ON STIPULATION TO ALLOW BETTY McCARTHY TO
FILE A FIRST RESPONDING DOCUMENT AND TO CONTINUE THE
STATUS CONFERENCE SET FOR JULY 9TH, 2020 ENTERED 7-07-20**

Tentative Ruling:

Tentative for 6/3/20:
Continue per stipulation (not yet received).

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily

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10:00 AM

CONT... **Deborah Jean Hughes**
accessible during the hearing.

Chapter 7

Why no status report? The status conference has been continued by stipulation to June 4, 2020 at 10:00 a.m. as to Timothy Hughes, Jason Hughes, and Betty McCarthy. It remains on calendar to address any concerns of the non-signatory and then will be continued to June 4, 2020 at 10:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By

Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Pro Se

Jason Paul Hughes

Pro Se

Betty McCarthy

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By

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10:00 AM

CONT... Deborah Jean Hughes

Chapter 7

Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#2.00 Kenneth Gharib's Motion For Partial Stay Of The April 24, 2020 Order (Docket No. 882)
(OST Signed 6-22-20)

Docket 882

Tentative Ruling:

Tentative for 7/9/20:

This is contemnor, Kenneth Gharib's ("Gharib's") motion for partial stay of the April 24, 2020 order granting Gharib's emergency motion for release ("Temporary Release Order"), pending Gharib's appeal. The motion is brought pursuant to Rule 8007 Federal Rules of Bankruptcy Procedure. The motion is opposed by the chapter 7 trustee, Thomas H. Casey ("Trustee").

1. Basic Background

The underlying bankruptcy case began on October 24, 2011 as a voluntary Chapter 11 bankruptcy petition of Kenny G Enterprises, LLC ("KGE"), of which Gharib was the principal. In 2013, this court converted the action to Chapter 7 and issued a temporary restraining order preventing Gharib from transferring proceeds of the KGE's estate comprised of about \$1,420,043.70. Gharib notwithstanding transferred that sum through a series of paper corporations he controlled within minutes of issuance of the order. Finding Gharib in contempt of that order on March 23, 2015, this court ordered him to pay sanctions to the trustee totaling \$1,420,043.70 and an additional \$1,000 fine for every day the sanction remained unpaid. When Gharib had still not complied with the order on May 12, 2015, this court ordered Gharib incarcerated until he complied with the order. On March 31, 2020, Gharib filed an Emergency Motion for Release in light of the COVID-19

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CONT... Kenny G Enterprises, LLC

Chapter 7

pandemic ("Motion"). After hearings held on April 8, 2020, April 15, 2020, and April 22, 2020, this court partially granted the Motion through its Temporary Release Order on April 24, 2020. Gharib filed a notice of appeal of the Temporary Release Order on April 30, 2020. The Temporary Release Order contemplates a further hearing July 30 and re-incarceration absent other order. Through this motion at bar Gharib now requests that the court stay the effectiveness of ¶¶ 2-8, ¶¶ 21-22, Appendix 3, and Appendix 4 of the Temporary Release Order pending his appeal.

2. Legal Standards

Consideration of whether to grant a stay pending appeal traditionally involves four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (internal quotation marks omitted)). "[A] discretionary stay pending appeal is viewed as an extraordinary remedy." *In re Smith*, 397 B.R. 134, 136 (Bankr. D. Nev. 2008) (internal citations and quotations omitted) "The party moving for a stay has the burden on each of these elements." *In re Irwin*, 338 B.R. 839, 843 (E.D. Cal. 2006). Movant's failure to satisfy any element is fatal to the motion. *Id.* "The first two factors of the traditional standard are the most critical." *Nken*, 556 U.S. at 434. The court examines each of the Nken elements:

A. Likelihood of Success on The Merits

The first factor, a strong showing of a likelihood of success on the merits, requires more than "a mere possibility" that relief will be granted.

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11:00 AM

CONT... **Kenny G Enterprises, LLC**

Chapter 7

Nken, 556 U.S. at 434. Here, Gharib argues that he can demonstrate that his incarceration for civil contempt is no longer coercive in nature, and thus has impermissibly become punitive. Five years have passed since he was first incarcerated, and more than three years have passed since the Ninth Circuit observed that at some point the combination of the incarceration and the daily monetary sanction of \$1,000 will cease to be coercive. In that time, Gharib argues, he has not produced one penny of the \$1.4 million at issue, which, Gharib argues, should be ample evidence that he is simply unable to comply. After all, the five years of incarceration for civil contempt is not only extraordinary by itself as evidenced by the scarcity of cases involving similar duration, but it is comparable to sentences for criminal, felonious conduct. Thus, Gharib concludes that the court erred in its decision to continue enforcing the contempt order.

Gharib also argues that enforcing the terms of the Temporary Release Order, which might require him to return to the Santa Ana Jail when it expires would be a violation of his substantive due process rights under the Fifth Amendment insofar as re-incarceration represents a greater risk of contracting Covid-19. In support of this argument, Gharib cites the recent case of *Castillo v. Barr*, 2020 WL 1502864 at *3 (C.D. Cal. Mar. 27, 2020), where the court observed, "[a] civil detainee's constitutional rights are violated if a condition of his confinement places him at substantial risk of suffering serious harm, such as the harm caused by a pandemic." Gharib then cites numerous cases where courts have released prisoners considering the current pandemic. Gharib asserts that the decision to release him on a furlough included the implicit concession that his continued confinement in the Santa Ana Jail violated his substantive due process rights because of his high risk of contracting a potentially severe case of Covid-19 given his allegedly frail health. Gharib also argues that his substantive due process rights were violated because the release conditions did not reflect the least possible power adequate to achieve the desired outcome. See *Spallone v. United*

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CONT... Kenny G Enterprises, LLC

Chapter 7

States, 493 U.S. 265, 276 (1990) ("[I]n selecting contempt sanctions, a court must exercise the least possible power adequate to the end proposed.") This same alleged failure, Gharib argues, also violated his right to procedural due process because not only were the restrictions in the Temporary Release Order more akin to what would be given to a criminal defendant, these conditions, partly fashioned by the trustee, were "forced" upon him as the only alternative was remaining confined in the Santa Ana Jail. In imposing such restrictive conditions, Gharib argues, the court failed to apply any substantive law or explain its reasoning for imposing such restrictions, while in the process depriving him of his right to an impartial decisionmaker. By doing so, Gharib argues that the court's order both implicated and deprived him of significant liberty interests, such as freedom of association, freedom of movement, and his asserted right to use the internet. Accordingly, Gharib concludes, he has demonstrated a likelihood of succeeding on the merits of his appeal.

The court has reviewed the provisions of the Temporary Release Order and maintains its belief that under the relevant circumstances of this case, the terms do represent the least possible power to achieve its goal, which is, primarily, to limit Gharib's potential of contracting Covid-19 while he is subject to the contempt order, but also to prevent Gharib from dissipating estate assets during his requested release (or to make recovery of the \$1.4 million, or what remains of it, more difficult). Gharib will no doubt recall that this court repeatedly solicited suggestions on how best to achieve these goals. Unrestricted release was a non-starter. The court notes that Gharib's motion neither acknowledges his own misconduct during the pendency of the bankruptcy case, nor does he suggest any less restrictive alternatives that would still realistically further the court's goals. The court need not recount the many blatant falsehoods Gharib has cynically spun, but as he is well-aware, the court was not convinced that he could be trusted not to further dissipate estate assets if he were given any opportunity to do so. The court

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CONT... **Kenny G Enterprises, LLC**

Chapter 7

does not believe that any court, upon reviewing the bizarre record in this case, would conclude differently. Furthermore, despite the limited relevance of Gharib's citation to criminal matters where inmates were released due to concerns over Covid-19, the court notes that Gharib did not analyze any of the conditions of those inmates' releases, which is rather telling. Here, the major challenge before the court was to fashion a furlough order that would prevent Gharib's access to estate property, a tricky proposition given the many ways to access money. The court certainly gave Gharib opportunities to suggest terms for temporary release that did not contain loopholes he could easily exploit once released and he failed to convince the court that any less restrictive terms could realistically accomplish the court's goals. Any reviewing court would likely not conclude otherwise.

Still, to entertain Gharib's some of Gharib's arguments, there might be a small chance that the Temporary Release Order is overbroad insofar as it limits Gharib's use of the internet. Gharib cites *United States v. Blair*, 933 F.3d 1271 (10th Cir. 2019), where the court stated, "in all but the most extreme cases, a special condition of supervised release that absolutely prohibits the use of the Internet will unreasonably impede a defendant's liberty in violation of [18 U.S.C. §3583(d)(2)]." *Id.* at 1277. Gharib does not analyze this case any further, likely because it does not really help him. In *Blair*, a criminal case, the court's statement quoted above is in response to a release order that read "[t]he defendant's use of computers and Internet access devices must be limited to those the defendant requests to use, and which the probation officer authorizes." *Id.* at 1274. The *Blair* court found that this term could be interpreted to authorize a *complete blackout of internet access, and was, therefore, impermissibly overbroad.* *Id.* at 1275-76 Here, no such prohibition could be read into the Temporary Release Order and unlike *Blair* we have neither the help of pretrial services nor is this a criminal matter. Be that as it may, a reviewing court might ask whether the term limiting Gharib's use of the internet is as narrow as it could be while still achieving the goal of

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CONT... Kenny G Enterprises, LLC

Chapter 7

limiting Gharib's access to estate property. Again, a reviewing court would note the number of times this court solicited suggestions on release terms and no superior alternatives emerged, which is not to say that if such superior alternatives have been conceived since, the court would not be amenable to amending the Temporary Release Order and incorporating them into any similar future orders. But the court is under no illusion that giving Gharib enhanced internet capability would help coerce Gharib to purge his contempt; on the contrary, it would only serve as a tempting opportunity to aggravate it. Thus, in the absence of better alternatives, a reviewing court would likely agree that limiting Gharib's use of the internet does not unduly deprive him of any fundamental rights. Similarly, Gharib argues that his freedom of association and movement have been impermissibly curtailed by the Temporary Release Order, which limits his authorized in-person contact to certain individuals and medical personnel. Again, it is worth remembering that the impetus for seeking the release was his fear of contracting Covid-19 in the jail. The Centers for Disease Control guidelines as well as numerous state and local guidelines still recommend social distancing, limiting interactions with people outside the household, and until recently, remaining in one's home, if possible, as some of the best ways to stay free of Covid-19. It seems strange then that Gharib would object to the very terms that contemplate his continued safety and virus-free status, which causes the court to wonder about the *bona fides* of Gharib's Covid-19 concerns. The prohibition on using banks is self-explanatory and needs no elaboration here.

In sum, Gharib has apparently forgotten that his stated reason for requesting relief from the contempt and incarceration order was his fear of contracting Covid-19 while in the Santa Ana Jail. The court has not forgotten. As a reminder, the court, despite strenuous opposition by the Trustee, agreed that Gharib's safety was potentially at some risk (though that was largely speculative), and so decided to modify its order enabling Gharib to leave the Santa Ana Jail on furlough. Gharib's motion for release was heard by the

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11:00 AM

CONT... Kenny G Enterprises, LLC

Chapter 7

court and he could participate in fashioning the least onerous release order possible under the relevant circumstances. That is all the substantive and procedural due process the case law requires. Now, it seems, in somewhat circular fashion, Gharib is using the court's compassion as a sword to attack the order which secured his requested release. Due process does not require that Gharib get relief on his preferred terms and the court should not be mistaken for a violin to be played so effortlessly. The court also reminds Gharib, as it has in every hearing, that he can secure his outright release (the relief he truly seeks) by purging his contempt or, importantly, cooperating with the Trustee in establishing a record of what happened to the funds, thereby establishing his impossibility defense. Likely, no court would or could find otherwise based on the unique facts of this lamentable case. Gharib has also not provided a comparison chart (or the like) that would demonstrate how he enjoys even less liberty now than were he an inmate at the Santa Ana Jail. Such an aid would assist the court in its analysis but only up to a point. Even the most zealous advocate would have to concede that releasing Gharib from jail would carry significant risk of further dissipation of estate assets, hence the need for more stringent release terms. Moreover, a release without conditions would cancel any remaining coercive effect of the original order of incarceration. Thus, Gharib has failed to demonstrate any likelihood, let alone a strong likelihood, of success on the merits of his appeal. As the *Nken* elements are conjunctive, the court's analysis could properly end here. For thoroughness, however, the court will also analyze the remaining *Nken* elements.

B. Irreparable Harm:

As noted above, the first two elements (likelihood of success and irreparable injury) are the most critical elements. To properly evaluate these two crucial considerations, courts employ a sliding scale approach wherein, for example, if the likelihood of irreparable injury is high, the likelihood of

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Chapter 7

success on appeal threshold can be respectively lower. *In re Red Mountain Mach. Co.*, 451 B.R. 897, 899–900 (Bankr. D. Ariz. 2011) "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citation and quotation omitted).

Gharib argues that he has suffered and will continue to suffer irreparable harm because of his purportedly compromised liberty interests and threat of returning to the Santa Ana Jail when the Temporary Release Order expires in a few weeks. However, as discussed above, Gharib's analysis of his liberty interests are supported mainly by cases in the criminal law context, and are quite factually distinguishable, rendering them of only limited value here. Even the *Melendrez* case cited by Gharib and quoted above held that the irreparable injury in that case was unlawful detention. *Id.* at 1002. Gharib has long argued that his continued incarceration is unlawful, but that argument has not convinced this or any other court to date. Thus, his irreparable injury argument is not on the most solid of ground. Still, Gharib cites case law that opines that any loss of liberty represents an irreparable injury. See *Xuyue Zhang v. Barr*, 2020 WL 1502607, at *7 (C.D. Cal. Mar. 27, 2020) ("[T]he Court finds that each passing day Petitioner spends within the walls of Adelanto is an irreparable injury: a day of freedom he cannot get back."). But this argument presupposes that Gharib's loss of liberty is either unlawful or not within his own power to correct. Neither supposition is correct for reasons already stated. Therefore, this makes little difference for purposes of this motion even when employing the sliding scale approach.

C. Harm to Trustee

Gharib also argues that the balance of harms tips toward him. The Trustee, Gharib argues, stands to lose only money, not his liberty. Trustee would likely disagree, but there is not much analysis on the harm Trustee might suffer. Thus, this factor might be said to be in equipoise but again, it

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CONT... **Kenny G Enterprises, LLC**
matters very little.

Chapter 7

D. Public Interest

Gharib argues that as a matter of public policy, an individual's liberty interests should be valued differently than one would value a sum of money. Under that logic no thief should ever worry about losing his liberty nor any contemnor ever return monies improperly taken despite being ordered to do so. While it is difficult to put a dollar figure on one's liberty, Gharib appears to forget that he voluntarily surrendered his liberty when he decided to (and continues to) ignore this court's lawful order. He also seems to forget that he holds the key to his liberty. There would seem to be an even stronger public interest in allowing courts to enforce their lawful orders through coercive sanctions, which the current sanctions still are, with no reviewing court having held otherwise. Thus, this prong tilts against Gharib.

3. Recent Events

The court notes that a significant event has occurred since the last hearing on this matter, i.e. the death of Gharib's brother, Steven Rushtabadi ("the brother") in April. The obvious interpretation of this event from Gharib's point of view is that, as the brother was purportedly the last person with knowledge of where the money is, his death leads to the conclusion that the trail has gone cold, which in turn leads to the conclusion that Gharib must be released because compliance is no longer possible. However, those suppositions are not built on bedrock, but rather more like upon thin air. First, the implicit premise requires that the court believe that the brother was, in fact, the last and only person with knowledge of the money's whereabouts. Why should the court conclude that? Gharib's argument also requires the court to believe the brother's assertions (not under oath) that the money has

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CONT... Kenny G Enterprises, LLC

Chapter 7

been spent and cannot be retrieved. Lastly, an insinuation is made that the brother has spent all the purloined funds on his heroin addiction, merely because he apparently died of an overdose of this illegal drug. The court is reluctant to accept any of these premises due to Gharib's inveterate trafficking in falsehoods throughout this case. But Gharib could help himself, the Trustee and the court by testifying to what he knows. Moreover, it would seem to the court that there is an equally plausible conclusion to be reached in light of the brother's death, which is that now more than ever, Gharib represents the best hope of ever finding the missing money or obtaining its return, and he should continue to be held in contempt and incarcerated until he cooperates.

4. Final Thoughts

One of the most confusing parts of this motion for stay pending appeal (in addition to its inherent circularity) is the omission to consider that a return to Santa Ana Jail is only one possibility, not a certainty. This was plainly stated in the Temporary Release Order. Of course, the court must again evaluate the relative threat of the virus considering then existing conditions and of Gharib's adherence to the original order, as well as the defense of impossibility. "Circularity," because in very large part this motion for stay is just a rehash about the propriety and continued coercive power of the original incarceration, which issue is and has been on appeal to the District Court for over a year and seemingly has little to do with the order permitting a furlough to ease the virus threat possibly posed by such continued incarceration. It is certainly hard to argue with a straight face that the furlough is somehow more oppressive than was the original incarceration. In sum, none of the elements for a stay pending appeal have been shown and so the motion will be denied.

Deny

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CONT... Kenny G Enterprises, LLC

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein
Tracy Casadio

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Ronald N Richards

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 9, 2020

Hearing Room 5B

2:00 PM

8:19-13164 Marc Wayne Wright

Chapter 7

Adv#: 8:19-01211 Alexander et al v. Wright

- #3.00** STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(6) of the Bankruptcy Code
(cont'd from 1-23-20)
(cont'd from 7-02-2020 per notice of cont. s/c filed 5-20-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-10-20 AT 2:00 P.M.
PER ORDER GRANTING DEFENDANT'S MOTION TO CONTINUE
BOTH STATUS CONFERENCE AND PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT HEARING ENTERED 7-06-20**

Tentative Ruling:

Tentative for 5/6/20:

Where's the promised summary judgment motion?

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Tentative for 1/23/2020:

Status conference continued to May 7, 2020 at 10:00 a.m. Court expect motion for summary judgment in meantime.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 9, 2020

Hearing Room 5B

2:00 PM

CONT... Marc Wayne Wright

Chapter 7

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

Defendant(s):

Marc Wayne Wright

Pro Se

Plaintiff(s):

Zachary Alexander

Represented By
Thomas J Polis

Noah Wright

Represented By
Thomas J Polis

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, July 9, 2020

Hearing Room 5B

2:00 PM

8:19-13164 Marc Wayne Wright

Chapter 7

Adv#: 8:19-01211 Alexander et al v. Wright

#4.00 Plaintiff's Zachary Alexander And Noah Wright's Motion For Summary Judgment

Docket 15

***** VACATED *** REASON: CONTINUED TO 9-10-20 AT 2:00 P.M.
PER ORDER GRANTING DEFENDANT'S MOTION TO CONTINUE
BOTH STATUS CONFERENCE AND PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT HEARING ENTERED 7-06-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

Defendant(s):

Marc Wayne Wright

Pro Se

Plaintiff(s):

Zachary Alexander

Represented By
Thomas J Polis

Noah Wright

Represented By
Thomas J Polis

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 14, 2020

Hearing Room 5B

10:00 AM

8:20-10391 Elycia M. Myers

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**FORD MOTOR CREDIT COMPANY LLC
Vs.
DEBTOR**

Docket 28

Tentative Ruling:

Tentative for 7/14/20:
Grant. Appearance is optional.

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Party Information

Debtor(s):

Elycia M. Myers

Represented By
Timothy McFarlin

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

**United States Bankruptcy Court
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Santa Ana
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Tuesday, July 14, 2020

Hearing Room 5B

10:00 AM

CONT... Elycia M. Myers

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, July 14, 2020

Hearing Room 5B

10:00 AM

8:18-13486 Jesus Gabriel Vargas

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR**

Docket 65

Tentative Ruling:

Tentative for 7/14/20:

Grant absent APO stipulation or loan current post confirmation.

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Party Information

Debtor(s):

Jesus Gabriel Vargas

Represented By
Lisa F Collins-Williams

Movant(s):

U.S. Bank National Association, not

Represented By
Sean C Ferry
Erin Elam

**United States Bankruptcy Court
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Tuesday, July 14, 2020

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10:00 AM

CONT... Jesus Gabriel Vargas

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, July 14, 2020

Hearing Room 5B

10:00 AM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTORS**

Docket 69

Tentative Ruling:

Tentative for 7/14/20:

Grant absent stipulated APO or loan current post confirmation.

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Party Information

Debtor(s):

Victor Arreola

Represented By
Christopher J Langley

Joint Debtor(s):

Cindy Morelos Arreola

Represented By
Christopher J Langley

**United States Bankruptcy Court
Central District of California
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Tuesday, July 14, 2020

Hearing Room 5B

10:00 AM

CONT... Victor Arreola and Cindy Morelos Arreola

Chapter 13

Movant(s):

Deutsche Bank National Trust

Represented By
Robert P Zahradka

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

#1.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 76

***** VACATED *** REASON: THIS MATTER WILL HEARD AT 3:00 P.M. SEE ITEM # 25.10**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lazaro Madrid Manzo

Represented By
David R Chase

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#1.10 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 48

Tentative Ruling:

Tentative for 7/15/20:

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Tentative for 6/17/20:

This has been continued for a considerable period but progress seems minimal or nonexistent. Nothing was filed by debtor as of 6/11, yet the Trustee's specific points appear to be left unaddressed. Convert to Chapter 7?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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CONT... Charles Ragan Peyton, III

Chapter 13

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Tentative for 4/15/20:

Debtor may have presented enough (barely) to overcome the "regular income" question, but the Trustee's other points remain to be addressed; (1) what about the 3d TD Diversified (2) Ford lease (3) evidence on monthly expenses and reasonableness of same (4) evidence of residence value for best interest of creditors question.

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Tentative for 2/19/20:
See #51

Party Information

**United States Bankruptcy Court
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1:30 PM

CONT... Charles Ragan Peyton, III

Chapter 13

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Charles Ragan Peyton III

Represented By
Richard G Heston
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

8:19-13886 Gary C. Macrides

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 0

Tentative Ruling:

Tentative for 7/15/20:

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Tentative for 6/17/20:

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CONT... Gary C. Macrides

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

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Party Information

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
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Hearing Room 5B

1:30 PM

8:19-14502 Andy T. Torres

Chapter 13

#3.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)

Docket 23

Tentative Ruling:

Tentative for 7/15/20:

It would seem that even considering debtor's calculations debtor should be able to afford payments of \$2589.13 for what the Trustee calculates is needed for a 100% plan, particularly in view of chronic over withholding and deductions of depreciation rental losses (which for this purpose can be overlooked). Tax refunds should be pledged, of course, and could possibly be scheduled as yearly catch up payments to relieve monthly cash flow. Still no explicit treatment for claim #4. If debtor denies liability on that claim an allowance motion will be required. Will debtor stipulate to interlineation?

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Tentative for 6/17/20:

There appear to be several points not yet nailed down: 1. Claim #4 of BMW. If the car has been abandoned the plan should either provide for the secured claim by giving up the vehicle or, at the very least, object to the claim on

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CONT...

Andy T. Torres

Chapter 13

same or similar basis as a secured only, not entitled to payments; 2. rental income, has that been provided for in the calculation of monthly payment?; 3. can the parties agree on proper withholding amount?, or if not, any refund paid to the Trustee under the plan? No tentative.

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Tentative for 4/15/20:

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Tentative for 3/18/20:

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CONT... Andy T. Torres

Chapter 13

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Party Information

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Movant(s):

Andy T. Torres

Represented By
Richard G Heston
Richard G Heston

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, July 15, 2020

Hearing Room 5B

1:30 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

**#4.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 0

Tentative Ruling:

Tentative for 7/15/20:

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Tentative for 6/17/20:

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**United States Bankruptcy Court
Central District of California
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CONT... Ashley Dawn Conrad

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:

Status on missing payments, 341(a) business budget, etc.?

Party Information

Debtor(s):

Ashley Dawn Conrad

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, July 15, 2020

Hearing Room 5B

1:30 PM

8:19-14637 Shane Alan Magness

Chapter 13

#5.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)

Docket 11

Tentative Ruling:

Tentative for 7/15/20:
Response to creditor objections is needed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

CONT... Shane Alan Magness

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Shane Alan Magness

Represented By
Hasmik Jasmine Papian

Movant(s):

Shane Alan Magness

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 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

8:20-10181 Marco Brito

Chapter 13

**#6.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 2

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

CONT... Marco Brito

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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, July 15, 2020

Hearing Room 5B

1:30 PM

8:20-10464 Rosa Elena Melgar Dominguez

Chapter 13

**#7.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 14

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

CONT... Rosa Elena Melgar Dominguez

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Rosa Elena Melgar Dominguez

Represented By
Richard L. Sturdevant

Movant(s):

Rosa Elena Melgar Dominguez

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 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

8:20-10483 Theresa Sanchez Tuckman

Chapter 13

**#8.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 5

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

It is difficult to determine current status. All plan payments must be current and missing documents provided. Regarding arrearages, was this in the nature of paying the mortgagee on account of taxes advanced on Debtor's behalf? If it was paid to OC taxes directly, this was improper, as it should have been dealt with under the plan. An amended claim should be obtained from the lender either by stipulation or plan objection. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

CONT... Theresa Sanchez Tuckman

Chapter 13

arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Movant(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

8:20-10493 Terry Gonzalez

Chapter 13

#9.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)

Docket 17

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

CONT... Terry Gonzalez

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/20/20:

The objections of the Trustee and secured creditor are well-taken. There appear to be feasibility questions, and at the very least the amount of arrearages must be correctly observed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

8:20-10657 Kyle Thomas Baldrige

Chapter 13

**#10.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 2

Tentative Ruling:

Tentative for 7/15/20:

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Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

CONT... **Kyle Thomas Baldrige**
pro se or self-represented litigants through August 31, 2020.

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Kyle Thomas Baldrige

Represented By
Bert Briones

Movant(s):

Kyle Thomas Baldrige

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, July 15, 2020

Hearing Room 5B

1:30 PM

8:20-10686 Margarita Antunez

Chapter 13

**#11.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 11

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

CONT... Margarita Antunez

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Margarita Antunez

Represented By
Christopher J Langley

Movant(s):

Margarita Antunez

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 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

8:20-11069 Keith Alan Miles and Jennifer Ann Miles

Chapter 13

**#12.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 2

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

CONT... Keith Alan Miles and Jennifer Ann Miles

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Keith Alan Miles

Represented By
Christopher J Langley

Joint Debtor(s):

Jennifer Ann Miles

Represented By
Christopher J Langley

Movant(s):

Keith Alan Miles

Represented By
Christopher J Langley

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, July 15, 2020

Hearing Room 5B

1:30 PM

8:20-11168 Jennifer Wilson

Chapter 13

**#13.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 18

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

CONT... Jennifer Wilson

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jennifer Wilson

Represented By
Anerio V Altman

Movant(s):

Jennifer Wilson

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, July 15, 2020

Hearing Room 5B

1:30 PM

8:20-11235 Felisa Dailey

Chapter 13

**#14.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 13

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

CONT... Felisa Dailey

Chapter 13

pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Felisa Dailey

Represented By
Richard G Heston

Movant(s):

Felisa Dailey

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 15, 2020

Hearing Room 5B

1:30 PM

8:20-11323 Guadalupe Gonzalez-Rodriguez

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Docket 5

Tentative Ruling:

Tentative for 7/15/20:

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Party Information

Debtor(s):

Guadalupe Gonzalez-Rodriguez	Represented By Gary Polston
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Movant(s):

Guadalupe Gonzalez-Rodriguez	Represented By Gary Polston
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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 15, 2020

Hearing Room 5B

1:30 PM

8:20-11459 Remy N. Smith

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 15

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Remy N. Smith

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 1675 Calendar**

Wednesday, July 15, 2020

Hearing Room 1675

1:30 PM

8:20-11512 Linda V Barnes

Chapter 13

#17.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 7/15/20:

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Party Information

Debtor(s):

Linda V Barnes

Represented By
Sunita N Sood

Movant(s):

Linda V Barnes

Represented By
Sunita N Sood
Sunita N Sood
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, July 15, 2020

Hearing Room 5B

1:30 PM

8:20-11514 Lawrence E Elkins

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

Docket 2

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 6-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lawrence E Elkins

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 15, 2020

Hearing Room 5B

1:30 PM

8:20-11518 Paulina Fausto

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISS FOR
FAILURE TO FILE SCHEDULES, STATEMENTS AND OR/PLAN
ENTERED 6-15-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulina Fausto

Represented By
Anthony P Cara

Trustee(s):

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 15, 2020

Hearing Room 5B

3:00 PM

8:15-13438 Salvador Manuel Robledo

Chapter 13

#20.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding
(cont'd from 6-17-20)

Docket 113

Tentative Ruling:

Tentative for 7/15/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:
Grant unless current. Appearance is optional.

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

Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

CONT... Salvador Manuel Robledo

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:
Grant unless current. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Grant absent explanation or modification motion on file if otherwise current.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

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

Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

CONT... Salvador Manuel Robledo

Chapter 13

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, July 15, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

#21.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments
(cont'd from 6-17-20)

Docket 74

Tentative Ruling:

Tentative for 7/15/20:
See #22.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:
There was an issue about getting the modification motion on for hearing?
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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3:00 PM

CONT... **Timothy Dale Cox and Diane Gloria Cox**
pro se or self-represented litigants through August 31, 2020.

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/20/20:
See modification motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:
Continue to coincide with hearing on the modification motion filed April 2.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

CONT... Timothy Dale Cox and Diane Gloria Cox
pro se or self-represented litigants through April 30, 2020.

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

Trustee(s):

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 15, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

#22.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan or Suspend Plan Payments
(cont'd from 6-17-20)

Docket 85

Tentative Ruling:

Tentative for 7/15/20:

The debtor should respond to the Trustee's question. Is extension under CARES Act a feasible solution?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:

Trustee questions whether the loss in income is attributable to the COVID19 pandemic, in which case an extension is suggested per the CARES Act. However, debtor seems to be arguing something different, i.e. loss of a contractor's license. More information on this question is requested. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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CONT... Timothy Dale Cox and Diane Gloria Cox Chapter 13

to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

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 15, 2020

Hearing Room 5B

3:00 PM

8:17-14634 Kirk P Howland

Chapter 13

#23.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 6-17-20)

Docket 87

Tentative Ruling:

Tentative for 7/15/20:
Grant unless current or modification motion on file

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:
Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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3:00 PM

CONT... **Kirk P Howland**

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Grant unless current or motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Kirk P Howland

Represented By
Christopher J Langley

**United States Bankruptcy Court
Central District of California
Santa Ana
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3:00 PM

CONT... Kirk P Howland

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 15, 2020

Hearing Room 5B

3:00 PM

8:18-10860 Jose Navarro

Chapter 13

#24.00 Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c) for failure to make plan payments.
(cont'd from 6-17-20)

Docket 86

Tentative Ruling:

Tentative for 7/15/20:
Grant. Appearance is optional.

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Tentative for 6/17/20:
Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
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3:00 PM

CONT... Jose Navarro

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Grant unless current or modification motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Jose Navarro

Represented By

**United States Bankruptcy Court
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CONT... Jose Navarro

Christopher J Langley

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

#25.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 6-17-20)

Docket 58

Tentative Ruling:

Tentative for 7/15/20:
Grant unless current, but see #25.1.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:
Continue to coincide with modification hearing. Appearance is optional.

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Hearing Room 5B

3:00 PM

CONT... Lazaro Madrid Manzo

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/20/20:
Grant unless current. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

#25.10 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 76

Tentative Ruling:

Tentative for 7/15/20:

The amended motion still does not address Trustee's points. Deny unless adequate response to all of the Trustee's points.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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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
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Hearing Room 5B

3:00 PM

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

Chapter 13

#26.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 6-17-20)

Docket 65

Tentative Ruling:

Tentative for 7/15/20:
Same. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:
Grant unless completely current. Appearance is optional.

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3:00 PM

CONT... Chales Drew Simpson and June P Simpson

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
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3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#27.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c)) (failure to make plan payments)
(cont'd from 6-17-20)

Docket 32

Tentative Ruling:

Tentative for 7/15/20:

Grant since opportunity to come current or file a modification motion was apparently not taken. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 4/15/20:

Grant unless current or modification on file. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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3:00 PM

CONT...

Annelize Ladage

Chapter 13

pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Same, status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Tentative for 2/19/20:
Same.

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Annelize Ladage

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#28.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision
(cont'd from 4-15-20)

Docket 50

Tentative Ruling:

Tentative for 7/15/20:

Nothing has changed since last time? Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 4/15/20:

Debtor has not addressed the question raised by the Trustee, i.e. failure to provide for several claims and inability to achieve promised percentage at the current rate. While a modification might cure these the motion will be granted unless such a motion is on file as of the hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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CONT... Wendie Lorraine Brigham

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(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, July 15, 2020

Hearing Room 5B

3:00 PM

8:19-14502 Andy T. Torres

Chapter 13

#29.00 Motion To Determine Whether Compensation Paid to the Beacon Law Firm and/or June Nguyen LLC and/or Gerald Kim [State Bar No. 249886] Was Excessive under 11 U.S.C. 329 and FRBP 2017 and to Order Counsel to File a 2016(b) Statement

Docket 46

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION TO RESOLVE UNITED STATES TRUSTEE'S MOTION TO DETERMINE WHETHER COMPENSATION PAID TO BEACON LAW FIRM AND/OR JUNE NGUYEN LCC AND/OR GERALD KIM WAS EXCESSIVE AND TO ORDER COUNSEL TO FILE A STATMENT ENTERED 7-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

#30.00 Creditor's Motion For Order Approving: (1) Settlement Agreement With Debtor Ashley Dawn Conrad; And (2) Approving Form Of Settlement Agreement

Docket 57

Tentative Ruling:

Tentative for 7/15/20:

Creditor Al Hassas/Sweet Lemons, LLC ("Creditor") moves for an order approving a Settlement Agreement between Creditor and Debtor in the voluntary chapter 13 case. The approval of this motion would result in the dismissal of the Debtor's chapter 13 bankruptcy. Trustee filed an opposition on 6/25/20. Trustee argues that the Settlement Agreement, if approved, should not involve dismissal of the chapter 13 and all payments should be disbursed by the Trustee. Additionally, Trustee requests the Creditor amend their proof-of-claim in accordance with the agreement and Debtor amend the plan to establish the appropriate class or subclass for treatment of the creditor in accordance with the agreement.

On 7/1/2020, Debtor filed a reply to the opposition. She argues the conditions requested by the Trustee would only result in a default on the Settlement Agreement. The agreement states a third-party has agreed to pay the monthly payment straight to the Creditor. Debtor argues if the payments must go through the Trustee for distribution to the Creditor there is too much room for error and the possibility of default is much higher, thus, putting a greater burden on the Debtor. Additionally, Debtor argues if the payments are made to the Trustee this would structurally alter the terms of the agreement and since the payments go beyond the five-year term of the bankruptcy plan, the Trustee could not fully satisfy the entirety of the agreement transitioning it into default.

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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

CONT...

Ashley Dawn Conrad

Chapter 13

Creditor and Debtor filed replies to the Trustee's opposition arguing that the *Jevic*-like settlement in contrast does not violate the priority scheme set forth in the Bankruptcy Code. See *Czyzewski v. Jevic Holding Corp.* 137 S. Ct. 973, 979 (2017). Additionally, they argue settlement would allow for the Debtor to begin a "fresh start" moving forward after dismissal. Finally, Creditor argues every prong in the four-prong fair classification test found in *In re Benner*, 146 B.R. 265, 266 (D. Montana 1992) has been satisfied. But *Benner* is a separate classification case, not a dismissal case.

Under 11 U.S.C § 105, the court holds the power over the case to approve, dismiss, or deny the motion to approve Settlement Agreement. Here, the motion falls within the scope of § 105 and the court holds power over this action. FRBP 9019 allows for the compromise or settlement of claims and controversies by the Creditor, Debtor, and Trustee following notice and a hearing. In order for the court to approve a proposed settlement the court should consider the following factors, as discussed in *In re Woodson*: 839 F.2d 610,620 (9th Cir. 1988), citing *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir.), *cert. denied sub nom. Martin v. Robinson*, --- U.S. ----, 107 S. Ct. 189, 93 L. Ed. 2d 122 (1986).

"(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises."

Here, (a) the probability of success in the Creditor's allegedly nondischargeable claim against the Debtor should be regarded as high. This would further burden the Debtor and have the likelihood of never creating an effective reorganization plan; (b) the agreement between the parties has taken place over that last several months with a full merger clause and understanding of each parties' obligations. The Debtor has secured a third-party, who has agreed to the terms and will satisfy all the required payments.

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Wednesday, July 15, 2020

Hearing Room

5B

3:00 PM

CONT...

Ashley Dawn Conrad

Chapter 13

(c) The complexity of the situation is straightforward enough. Debtor lost a civil suit to the Creditor who holds the majority debt against the Debtor. The cost of litigation would significantly decrease the total amount in the estate, diminishing the ability to pay not only the Creditor as agreed but any remaining unsecured claims.

But the main issue arises under the last *Woodson* factor: "the paramount interest of the creditors . . ." that is *creditors*, plural. The agreement is solely between the Debtor and one Creditor. It fails to take into consideration or even discuss any other creditors who must be treated within the reorganization plan. Understandably, Creditor holds almost 90% of the total debt, but all other creditors must also be considered when approving such a motion, particularly one involving a dismissal. Approving the Settlement Agreement should be a compromise which is "fair and equitable" to *all parties involved*. (italics added) *In re A & C Properties*, 784 F.2d at 1381. The agreement focuses solely on questions of Creditor's and Debtor's concerns but fails to consider at all any other creditors.

The court is not indifferent to the Debtor's fresh start nor to her difficulty in handling a non-dischargeable obligation, nor is the court indifferent to the administrative cost savings to the reorganization effort. All are good points, but the movants fail to convince that these points cannot be handled within the context of a Chapter 13 plan. The fact that payments might continue past the five years is hardly an insuperable impediment. The plan can acknowledge the non-dischargeable nature of the obligation and acknowledge that at the end of term the payments will have to go on since the discharge otherwise generally applicable under the plan will not affect this obligation. The Trustee need not be involved after the end of the term. So, no good reason is given to abandon all other creditors in order to further the convenience of just two parties.

Deny as requested. Suggest continuance for re-draft.

Please note: In light of concerns about COVID-19/Coronavirus and attempts

**United States Bankruptcy Court
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3:00 PM

CONT... Ashley Dawn Conrad

Chapter 13

to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Ashley Dawn Conrad

Represented By
Matthew D. Resnik

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, July 15, 2020

Hearing Room 5B

3:00 PM

8:19-12290 Jorge Alberto Barreda

Chapter 13

#31.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 61

***** VACATED *** REASON: OFF CALENDAR - WITHDRAWAL AND VOLUNTARY DISMISSAL OF DEBTOR'S MOTION TO MODIFY OR SUSPEND PLAN PAYMENTS FILED 5-27-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Alberto Barreda

Represented By

Amanda G Billyard

Richard L. Sturdevant

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, July 15, 2020

Hearing Room

5B

3:00 PM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#32.00 Debtor's Motion to Avoid Junior On Principal Residence With CTF Asset Management, LLC
(cont'd from 5-20-20)

Docket 32

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF WITHDRAWAL RE: DEBTOR'S NOTICE OF MOTION AND MOTION TO AVOID LIEN JUNIOR LIEN ON PRINCIPAL RESIDENCE FILED 7-08-20**

Tentative Ruling:

Tentative for 5/20/20:
Continue per stipulation signed 5/19.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:
Continue for about 30 days to allow creditor to obtain its own appraisal.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings.

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3:00 PM

CONT... Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

Telephonic appearances may be arranged by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega 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
Courtroom 5B Calendar**

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Hearing Room 5B

3:00 PM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#33.00 Confirmation of Chapter 13 Plan
(cont'd from 5-20-20)

Docket 14

Tentative Ruling:

Tentative for 7/15/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 5/20/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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3:00 PM

CONT... Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/18/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878.

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Party Information

Debtor(s):

Aureliano Gonzalez	Represented By Elena Steers
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Joint Debtor(s):

Juana Artega De Gonzalez	Represented By Elena Steers
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Movant(s):

Aureliano Gonzalez	Represented By Elena Steers
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Juana Artega De Gonzalez	Represented By Elena Steers Elena Steers
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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
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:20-10153 Keri L Doumani

Chapter 13

#34.00 Objection to Debtor's Claims of Exemption
(cont'd from 4-15-20) [HOLDING DATE]

Docket 0

Tentative Ruling:

Tentative for 7/15/20:

It would appear that the Chapter 7 trustee does not contest the exemption as she has filed nothing. Overrule objection to exemption.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 4/15/20:

Sustain. Allow at \$75,000?

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**United States Bankruptcy Court
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Wednesday, July 15, 2020

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3:00 PM

CONT... Keri L Doumani

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Keri L Doumani

Represented By
Kevin Tang

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:20-11235 Felsia Dailey

Chapter 13

#35.00 Objection To Claim Of Claimant Calvary SPV I, LLC As Assignee Of GE Capital Corp./GECAF

Docket 30

Tentative Ruling:

Tentative for 7/15/20:
Sustain. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Felsia Dailey

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:20-11572 Jonathan E McGee and Amy McGee

Chapter 13

#36.00 Order To Show Cause Why The Case Should Not Be Dismissed For Filing The Credit Counsel Certificate 6 Months Later.

Docket 1

Tentative Ruling:

Tentative for 7/15/20:
Withdraw as satisfied. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Jonathan E McGee

Represented By
Julie J Villalobos

Joint Debtor(s):

Amy McGee

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#37.00 Confirmation of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 48

***** VACATED *** REASON: THIS MATTER WILL HEARD AT 7-15-20
AT 1:30 P.M. - SEE MATTER 1.10**

Tentative Ruling:

Tentative for 6/17/20:

This has been continued for a considerable period but progress seems minimal or nonexistent. Nothing was filed by debtor as of 6/11, yet the Trustee's specific points appear to be left unaddressed. Convert to Chapter 7?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Debtor may have presented enough (barely) to overcome the "regular income" question, but the Trustee's other points remain to be addressed; (1) what about the 3d TD Diversified (2) Ford lease (3) evidence on monthly expenses and reasonableness of same (4) evidence of residence value for best interest of creditors question.

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3:00 PM

CONT... Charles Ragan Peyton, III

Chapter 13

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:
See #51

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Charles Ragan Peyton III

Represented By
Richard G Heston
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#38.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing
(con't from 4-15-20 per order approving stipulation to cont. evidentiary hrg on debtor's objection to proof of claim of shellpoint mortgage servicing entered -awaiting the order as 3-26-20)

Docket 26

Tentative Ruling:

Tentative for 7/15/20:

A tentative was issued back in February of 2019 concluding that there was a need for a follow-up evidentiary hearing. The evidentiary hearing has been continued many times by stipulation. It appears that the last written update on this case came from a stipulation to continue the hearing filed in February of 2020. That stipulation asserted that the parties were close to settling and did not want to incur unnecessary fees and costs. In the months since then, Debtor has parted ways with her attorney and is now proceeding pro se. Thus, where this matter stands at present is anyone's guess.

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Debtor, Diane Weinsheimer ("Debtor") disputes a \$415,142.08 prepetition

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Wednesday, July 15, 2020

Hearing Room

5B

3:00 PM

CONT...

Diane Weinsheimer

Chapter 13

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
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#39.00 Confirmation of Chapter 13 Plan
(con't from 6-17-20)

Docket 2

Tentative Ruling:

Tentative for 7/15/20:
Status? See #38.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/17/20:
Continue one last time to July 15 to coincide with objection to claim scheduled for July 15, 2020 @ 3 p.m. Debtor must be current on the two plan payments overdue. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney –

**United States Bankruptcy Court
Central District of California
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

CONT... Diane Weinsheimer

Chapter 13

pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Continue to July 15 at 3:00PM to coincide with claim objection hearing.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:

Status?

Tentative for 1/15/20:

Status? See #56.

Tentative for 11/20/19:

Is resolution of #58 a precondition to confirmation?

**United States Bankruptcy Court
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Wednesday, July 15, 2020

Hearing Room 5B

3:00 PM

CONT... Diane Weinsheimer

Chapter 13

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.

Tentative for 8/21/19:
Evidentiary hearing on claim objection is being continued by stipulation?

Tentative for 5/29/19:
Same.

Tentative for 4/17/19:
Is a resolution of claim objection (see #43) necessary before confirmation?

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
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Thursday, July 16, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01066 Remares Global LLC v. Marshack

**#1.00 STATUS CONFERENCE RE: Complaint for Declaratory Relief Regarding
Validity, Extent and Priority of Judgment Lien**

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE RE-
SCHEDULED FOR 7/23/2020 AT 10:00 A.M. PER ANOTHER SUMMONS
ISSUED ON 5/8/2020**

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Richard A Marshack

Pro Se

Plaintiff(s):

Remares Global LLC

Represented By
Alan W Forsley

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 16, 2020

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.

**#2.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer - (HOLDING DATE)
(set from s/c held on 5-24-18)
(con't from 8-1-19)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-30-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

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

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

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

Thursday, July 16, 2020

Hearing Room 5B

10:00 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

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

Thursday, July 16, 2020

Hearing Room 5B

10:00 AM

8:19-10414 James Michael Roberts

Chapter 7

Adv#: 8:19-01150 Hulon v. Roberts

#3.00 PRE-TRIAL 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) (set from s/c hrg held 11-07-19)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF DISMISSAL OF ADVERSARY PROCEEDING FILED BY PLAINTIFF
6/9/2020**

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
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, July 16, 2020

Hearing Room 5B

10:00 AM

8:18-12520 Dale Garfield Knox and Cheryl Lynn Knox

Chapter 11

#4.00 EVIDENTIARY HEARING RE: Debtor's Objection To The Claim Of The Internal Revenue Service
(set from s/c hrg held on 12-04-19. con't from 3-19-2020 per ord. grt. stip to continue hrg. ent. 3-3-2020)

Docket 83

*** VACATED *** REASON: OFF CALENDAR - ORDER OF
DISMISSAL WTH SPECIAL RESTRICTION ENTERED 4-17-20

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**

Tuesday, July 21, 2020

Hearing Room

5B

10:30 AM

8:17-11524 Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

**#1.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-23-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 55

Tentative Ruling:

Tentative for 7/21/20:
Grant absent APO. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/23/20:
Same as before, grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be

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

Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

CONT... Cheryl A. McCoy and Bryan Anthony McCoy
arranged with CourtCall by calling (866) 582-6878.

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:

Grant, absent a stipulation. Debtors are not privileged to default on confirmed plans in the hope that they can get further concessions, and so, the mere unanswered request for a stipulation, even if true, is not a basis for denying the motion.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Cheryl A. McCoy

Represented By
Anerio V Altman

Joint Debtor(s):

Bryan Anthony McCoy

Represented By

**United States Bankruptcy Court
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Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

**CONT... Cheryl A. McCoy and Bryan Anthony McCoy
Anerio V Altman**

Chapter 13

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

8:17-14950 Kellie J Richardson-Ford

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**TOWD POINT MORTGAGE TRUST 2019-3, U.S. BANK NATIONAL
ASSOCIATION**

**Vs.
DEBTOR**

Docket 54

***** VACATED *** REASON: CONTINUED TO AUGUST 18, 2020 AT
10:00 A.M. PER ORDER ON STIPULATION TO CONTINUE HEARING
ON MOTION FOR RELIEF FROM AUTOMATIC STAY ENTERED
7/8/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kellie J Richardson-Ford

Represented By
Andy C Warshaw

Movant(s):

Towd Point Mortgage Trust 2019-3,

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, July 21, 2020

Hearing Room 5B

10:30 AM

8:18-10215 Isabel Garcia Rainey

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 6-30-20 per order granting stip. cont.hrg re: mtn entered
6-26-20)**

**CITIMORTGAGE, INC.
Vs.
DEBTOR**

Docket 50

***** VACATED *** REASON: CONTINUED TO 8-18-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE HEARING ON
MOTION FOR RELIEF FROM AUTOMATIC STAY ENTERED 7-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isabel Garcia Rainey

Represented By
Craig J Beauchamp

Movant(s):

CitiMortgage, Inc.

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 21, 2020

Hearing Room 5B

10:30 AM

8:18-11227 Yudy Saidaly Canales

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-23-20)**

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR**

Docket 43

Tentative Ruling:

Tentative for 7/21/20:
Grant absent APO. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/23/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

CONT... Yudy Saidaly Canales Chapter 13

to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Yudy Saidaly Canales

Represented By
Brian J Soo-Hoo

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

CONT... Yudy Saidaly Canales

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 21, 2020

Hearing Room 5B

10:30 AM

8:18-12052 Frank Bowers, Jr.

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**BAXTER CREDIT UNION
Vs
DEBTOR**

Docket 96

Tentative Ruling:

Tentative for 7/21/20:

Grant absent loan being current post petition or APO. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Frank Bowers Jr.

Represented By
Peter Rasla

Movant(s):

Baxter Credit Union

Represented By
Daniel K Fujimoto
Alan Steven Wolf

**United States Bankruptcy Court
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Santa Ana
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Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

CONT... Frank Bowers, Jr.

Chapter 13

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 21, 2020

Hearing Room 5B

10:30 AM

8:19-11249 Delia Banuelos De Castillo

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-10-20)
(rescheduled from 6-9-2020 at 10:30 a.m per court)**

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 38

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 7-08-20**

Tentative Ruling:

Tentative for 7/7/20:
Same.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 6/10/20:

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Santa Ana
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Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

CONT... Delia Banuelos De Castillo

Chapter 13

Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/6/20:
Status?

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:
Same.

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Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 21, 2020

Hearing Room 5B

10:30 AM

CONT... Delia Banuelos De Castillo

Chapter 13

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Grant unless lender confirms debtor is current or APO.

Party Information

Debtor(s):

Delia Banuelos De Castillo

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, National

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, July 21, 2020

Hearing Room 5B

10:30 AM

8:20-11551 Raymond Paul Richards and Tanya Kay Richards

Chapter 7

#7.00 Motion For Relief From The Automatic Stay REAL PROPERTY

**DEUTSCHE BANK TRUST COMPANY
Vs.
DEBTORS**

Docket 16

Tentative Ruling:

Tentative for 7/21/20:
Grant. Appearance is optional.

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Party Information

Debtor(s):

Raymond Paul Richards

Represented By
Nicholas M Wajda

Joint Debtor(s):

Tanya Kay Richards

Represented By
Nicholas M Wajda

**United States Bankruptcy Court
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Santa Ana
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Hearing Room 5B

10:30 AM

CONT... Raymond Paul Richards and Tanya Kay Richards

Chapter 7

Movant(s):

Deutsche Bank Trust Company

Represented By
Jacky Wang

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, July 21, 2020

Hearing Room 5B

10:30 AM

8:20-11803 Khalid Sayed Ibrahim

Chapter 13

#8.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate (980 S Citron St #39 Anaheim, CA 92805) .

Docket 11

Tentative Ruling:

Tentative for 7/21/20:
Grant. Appearance is optional.

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Party Information

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
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Tuesday, July 21, 2020

Hearing Room 5B

11:00 AM

8:19-10526 LF Runoff 2, LLC

Chapter 7

#9.00 Application For Final Fee And Expenses For Period: 2/14/2019 to 5/1/2019:

THOMAS DILL , CREDITOR'S ATTORNEY

FEE	\$20,833.35
EXPENSES:	\$ 0.00.

Docket 174

Tentative Ruling:

Tentative for 7/21/20:

No showing of entitlement to allowance of an administrative claim under §§ 327 and 330. the Trustee denies employment of this applicant and it does not appear the DIP employed him post-petition either (at best it was a subsidiary). Unclear whether this claim was contemplated in the Browndorf settlement. Court defers to Trustee's request for a claim allowance hearing as the better procedure. Deny, but without prejudice to allowance under a proof of claim.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

LF Runoff 2, LLC

Represented By

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Hearing Room 5B

11:00 AM

CONT... LF Runoff 2, LLC

Chapter 7

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**

Tuesday, July 21, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

#10.00 Chapter 7 Trustee's Motion For Order Extending Time To File Avoidance Actions Under 11 U.S.C. § 546

Docket 56

Tentative Ruling:

Tentative for 7/21/20:
Grant. Appearance is optional.

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Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

**United States Bankruptcy Court
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Tuesday, July 21, 2020

Hearing Room 5B

11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

- #11.00** Secured Creditor Estate Of Late William L. Seay (U.S.M.C. (R.E.T.))'s Motion For Order Requiring Accounting, Restoration Of Unauthorized Payments, And Adequate Protection
(cont'd from 6-23-20 per order granting mtn to cont. hrg enteref 6-08-20)

Docket 623

Tentative Ruling:

Tentative for 7/21/20:

This is the motion of by the Estate of William L. Seay ("Seay"), a creditor of the bankruptcy estate, to prohibit use of cash collateral and for an order requiring accounting, restoration of unauthorized payments, and adequate protection. The motion is opposed by the Chapter 7 trustee, Thomas H. Casey ("Trustee").

This motion comes on the heels of a motion to dismiss the First Amended Complaint ("FAC") in the related adversary proceeding styled, *Estate of William L. Seay v. Thomas H. Casey*, 8:19-ap-01131 ("the adversary proceeding") that was heard by this court just over a month ago in mid-June. The motion to dismiss was granted with leave to amend. As Trustee argues, despite being brought in the main case, this motion appears to seek substantively similar, if not identical relief as sought by the FAC in the adversary proceeding. The underlying facts in this motion are identical to those recited in the tentative ruling on the motion to dismiss the FAC and are incorporated herein by reference. The parties involved are also identical.

The motion seeks the following relief:

- 1) An order requiring Trustee to account for the funds he was ordered to hold in trust in a segregated account pursuant to the December 8, 2016 Sale Order;
- 2) An order requiring Trustee to either restore to the account the

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11:00 AM

CONT...

Robert A. Ferrante

Chapter 7

unauthorized payments made to his law corporation or requiring dollar for dollar adequate protection.

The relief sought in the recently dismissed FAC requested the following relief:

- 1) Disgorgement of the cash collateral misappropriated by Trustee and adequate protection;
- 2) Restitution by common count for money had and received following Seay's rescission of the contract with Trustee;
- 3) Declaration of a constructive trust with an obligation to disgorge the funds back to the segregated account pending resolution of the restitution claims made in the adversary proceeding; and
- 4) An injunction prohibiting Trustee or his associates from invading or dissipating funds in the segregated account pending further order of court.

It is obvious that the relief sought in the dismissed FAC and the present motion, although styled differently, are substantially similar, if not identical.

But the motion is not only infirm procedurally it is also weak substantively. Trustee persuasively argues that this motion should be denied because it is procedurally infirm in the following ways:

- 1) The Seay Estate lacks standing to bring this motion because it is simply a collection of assets and liabilities without capacity to sue or be sued, and, therefore, requires a proper representative. This was precisely one of the points decided regarding the FAC.
- 2) As discussed above, the present motion and the FAC sought

**United States Bankruptcy Court
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Chapter 7

and seek materially identical relief in different cases.

3) The Motion requests recovery of property from the Estate and Estate professionals, determination of the validity of the Seay Estate's purported lien based on Seay's alleged rescission of the Agreement, and for equitable and injunctive relief for "restoration of funds" and an accounting, all of which must be sought by adversary proceeding under Rule 7001.

Regarding standing, Seay conceded in the FAC proceeding that the Seay estate needed a proper representative as required by California Probate Code §9820 and suggested that Col. Seay's wife, Nancy Klein Seay, would be fulfilling that role. However, as Trustee asserts, there does not appear to be any evidence that a probate estate has been opened for the Estate of William L. Seay, nor has counsel for the Seay Estate provided the Trustee or the court with a copy of the Order Appointing Representative for such estate. The court assumes that such evidence will be produced at some point as proper standing must be established to bring any of these motions or indeed a second amended complaint in the adversary proceeding. Thus, the court concludes that Seay still lacks standing to bring this motion for want of a properly designated representative.

Trustee's second procedural argument, which asserts that this motion is improper as it seeks nearly identical relief as sought in the adversary proceeding, is also persuasive. Trustee cites language from *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3rd Cir. 1977) for the proposition that a plaintiff has "no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendants." See also, *Lee v. Benedict*, 958 F.2d 377 (9th Cir. 1992). "The power of a federal court to prevent duplicative litigation is intended to foster judicial economy, the comprehensive disposition of litigation, and to protect parties from the vexation of concurrent litigation over the same subject matter." *In re Porter*, 295 B.R. 529, 543 (Bankr. E.D. Penn. 2003). (Internal quotations omitted).

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5B

11:00 AM

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Robert A. Ferrante

Chapter 7

"Colloquially described as 'claim splitting,' the practice refers to the improper pursuit of more than one lawsuit against the same parties arising out of the same facts. The theory of claim splitting bars a party from subsequent, duplicative litigation where the same controversy exists." *In re Don Rose Oil*, 614 B.R. 358, 367 (Bankr. E.D. Cal. 2020). Though a species of claim preclusion, claim splitting does not require a final judgment on the merits in a prior case. *Id.* at 367-68. The court examines whether the causes of action and relief sought, as well as the parties or privies to the action, are the same. *Id.* at 368. This rule has been applied where a party files a request seeking an order that is subject to a pending Adversary Proceeding. See *In re Zimmer*, 586 B.R. 413, 414 (Bankr. W.D. Penn. 2018). As discussed above, and set forth in chart form in Trustee's opposition, the requested relief in the present motion is substantially and materially duplicative to that sought in the FAC. The parties are also identical. Seay has apparently hinted an intent to file a second amended complaint repairing, among other things, the procedural deficiencies identified by the court in its adopted tentative ruling on Trustee's motion to dismiss. The court does not know what to expect in the second amended complaint, when (if) it is filed, and so the court cannot determine absolutely at this time whether there will continue to be significant or total overlap. But, unless movant announces a determination not to file a second amended complaint, it is proper to deny this motion or stay the motion pending adjudication of the adversary proceeding.

Trustee also persuasively argues that this motion is improperly brought in the main case because the relief sought is only properly obtained through an adversary proceeding according to the Federal Rules of Bankruptcy Procedure ("FRBP"). First, under FRBP 7001-(1), an action to recover money or property must be brought by adversary proceeding. As argued by Trustee, the motion seeks restoration of payments made to the estate pursuant to the underlying agreement, which constitutes an action to recover money, likely putting it inside the purview of FRBP 7001-1. Trustee next argues that this motion is asserting rescission of the underlying agreement and reinstatement

**United States Bankruptcy Court
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CONT... Robert A. Ferrante

Chapter 7

of the Seay lien. In other words, Seay seeks a determination of the validity, priority, or extent of its lien, which is an action that must also be brought in an adversary proceeding pursuant to FRBP 7001-(2). Trustee further argues that the motion's seeking of restoration of funds constitutes a form of injunctive and equitable relief and must be brought in an adversary proceeding under FRBP 7001-(7). See *Thompson v. Ocwen Loan Servicing, LLC*, 2015 WL 3454726 at *5 (E.D. Wis. May 29, 2015) ("Bankruptcy Rule 7001 provides that 'a proceeding to recover money or property,' which in theory would include a claim for unjust enrichment, and 'a proceeding to obtain an injunction or other equitable relief,' are adversary proceedings. Bank R. 7001(1), (7).") For these reasons, the motion is procedurally improper and should be rejected on that basis. Seay's reply does not contain any analysis of FRBP 7001 and does not acknowledge or attempt to argue around the procedural deficiencies asserted by Trustee, which leads the court to the conclusion that these arguments are not contested. Instead, the reply contains several pages of analysis on issues familiar to the court in the adversary proceeding such as the purported failure of consideration of the underlying agreement between Seay and Trustee, purported unilateral rescission of that agreement by Seay, and Trustee's quasi-judicial immunity, all of which have been argued before, and in any case, are more appropriately considered in the adversary proceeding.

Lastly, Seay's motion is substantively suspect. As the court recalls (and as a review has confirmed), part of the Settlement Agreement between the estate and Seay included a 50/50 split of the proceeds of the real property, and under that agreement Seay's lien would come off (or be "carved out" in language of the Agreement) to constitute the estate's share. That is the obvious meaning of the term "carve out" which appears conspicuously in not only the Trustee's motion to approve the compromise, but, importantly, in Seay's supporting pleading as well. If the term "carve out" has another meaning, it is not explained in the papers. Without a lien Seay cannot now be heard to argue about cash collateral or adequate protection, as those

**United States Bankruptcy Court
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Robert A. Ferrante

Chapter 7

concepts are only appropriate in the context of a *secured claim*. As the court understands it, there is no contention that any professional fee payments came out of Seay's 50% encumbered portion, which portion was in fact duly paid to him. While the court understands Seay has some argument about why he (or it) should be entitled to a rescission, the court does not see that such a rescission can be effected unilaterally and immediately, as movant seems to be arguing (or as would be necessary for the motion to make any sense). Pursuant to Cal. Civ. Code section 1691, "to effect a rescission a party to the contract must, promptly upon discovering the facts which entitle him to rescind...(a) Give notice of rescission to the party as to whom he rescinds; and (b) Restore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so." "[A] party to a contract cannot rescind at his pleasure, but only for some one or more of the causes enumerated in section 1689 of the Civil Code." *McCall v. Superior Court*, 1 Cal.2d 527, 538 (1934). "One seeking to rescind a contract, or to enforce a rescission which he claims he has effected in the manner provided in section 1691 of the Civil Code, must allege facts showing that he had good right to rescind, and for what cause a rescission had taken place, or that a rescission had been made by consent." *Id.* Of the causes enumerated in Cal. Civ. Code section 1689(b)(1), the court observes that between this motion and the FAC, duress, fraud, and collusion are alleged as is failure of consideration under §1689(b)(2) and (3). However, the court notes that these allegations, which were put forth in the FAC, were dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6). So, what is the effect of the dismissal on the attempted rescission? This question is likely not answerable with any finality at this point as a second amended complaint is expected in the next few weeks. It is at that point that the court will decide whether Seay has stated facts sufficient to support causes of action for fraud, collusion, duress or failure of consideration, assuming they are alleged. In other words, the facts currently before the court do not give rise to a valid rescission. It is premature for this court to make any rulings on

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11:00 AM

CONT...

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the issue of rescission, but it is clear that this still unsettled question does not support the form of adequate protection and accounting sought in this motion.

The motion reads very much like a motion for reconsideration of the court's original order on the interim fees including many familiar arguments the court found unpersuasive in the past, including the very recent past. Missing from such a motion is any intervening change in law or previously undiscovered evidence that would warrant such reconsideration. It is worth remembering that Seay unsuccessfully objected to the interim fee applications, then appealed the interim fees order only to see the appeal denied as premature and interlocutory. What has changed? The fee awards are still interim, and therefore not final. Thus, as Trustee argues, the proper time to lodge such objections, as are made in this motion and elsewhere, is when Trustee submits his final report and application for fees. Trustee is fully aware that the fee awards are only interim and may be revisited or even adjusted. See *In re Strand*, 375 F.3d 854, 858 (9th Cir. 2004) (quoting *Cont'l Ill. Nat'l Bank & Trust Co. v. Charles N. Wooten, Ltd. (In re Evangeline Ref. Co.)*, 890 F.2d 1312, 1321 (5th Cir.1989) ("Because interim awards are interlocutory and often require future adjustments, they are 'always subject to the court's reexamination and adjustment during the course of the case.'")), Similarly, the court finds unpersuasive Seay's request to require the expense and inconvenience of an accounting from the estate, as movant requests.

Lastly, the court does not wish to make any rulings that could be misinterpreted as factual findings, which could then lead to unnecessary confusion and possibly risk inconsistent rulings in the pending adversary proceeding. It is not even clear why this motion is being brought at all seeing as the adversary proceeding is in its early stages with a second amended complaint likely to be filed in just a few weeks, which will most likely advance many of the same arguments and allegations made in this motion. In sum, the court does not see the judicial efficiency in requiring Trustee to make an accounting (which he will have to do anyway for his final fee application) at this time; nor is the court persuaded that restoration of the funds and/or

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CONT... Robert A. Ferrante

Chapter 7

adequate protection is required, as the request is based solely on Seay's asserted theory of unilateral rescission of the underlying agreement, which the court has not and cannot rule on yet, especially when brought by a procedurally dubious motion.

Deny.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

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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8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#12.00 Kennth Gharib's Motion For Partial Stay Of The April 24, 2020 Order

Docket 882

*** VACATED *** REASON: THIS MATTER WILL HEARD ON 7-09-20
AT 11:00 A.M. PER OST SIGNED 6-22-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein
Tracy Casadio

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Ronald N Richards

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Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

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)
(cont'd from 7-08-20)**

Docket 33

Tentative Ruling:

Tentative for 7/22/20:
Dismiss or convert, at movant's preference.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/8/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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CONT... Bradley Ray Fox

Chapter 11

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Bradley Ray Fox

Pro Se

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10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition
(con't from 6-10-20)

Docket 1

Tentative Ruling:

Tentative for 7/22/20:
Convert to Chapter 7. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 6/10/20:
Convert? If the case should remain in Chapter 11, why?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

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CONT... Vitargo Global Sciences, Inc.

Chapter 11

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:
Continue to April 8, 2020 at 10:00 a.m. Appearance waived.

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.

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CONT... Vitargo Global Sciences, Inc.

Chapter 11

Tentative for 6/27/18:
Status? Conversion?

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.

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10:00 AM

CONT... Vitargo Global Sciences, Inc.

Chapter 11

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
Aram Ordubegian
Christopher K.S. Wong

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10:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

#3.00 Order To Show Cause Re: Dismissal Or Conversion Of Case To Chapter 7

Docket 0

Tentative Ruling:

Tentative for 7/22/20:
Convert to Chapter 7.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

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
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Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual

Docket 1

Tentative Ruling:

Tentative for 7/22/20:

Deadline for filing plan and disclosure , 4 months from petition as debtor requests. Claims bar order 60 days after notice. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#5.00 Debtor's Emergency Motion for Order Authorizing: 1. Use of Cash Collateral On An Interim Basis; and 2. Setting Final Hearing On Use of Cash Collateral
(OST Signed 6-05-20)
(cont'd from 6-10-20)

Docket 6

Tentative Ruling:

Tentative for 7/22/20:

The court is aware of the stipulation filed 7/21. However, the court notes that the June MOR projects negative cash flow for the second straight month. Should the court be worried?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 6/10/20:

Per order, opposition due at hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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CONT... AEPC Group, LLC

Chapter 11

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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10:00 AM

8:20-11749 Navarrete Investments, LLC

Chapter 11

**#6.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Non-Individual.
LLC**

Docket 1

Tentative Ruling:

Tentative for 7/22/20:

October 16, 2020 deadline for filing of plan and disclosure statement. Claims bar 60 days after dispatch of notice to creditors. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Navarrete Investments, LLC

Represented By
Julian K Bach

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10:00 AM

8:18-10370 John J Trejo and Elsie Alfeche Baclayon

Chapter 11

**#7.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary Petition.
(set from s/c hrg. held on 10-31-18)
(cont'd from 3-25-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING REORGANIZED DEBTOR'S MOTION TO ADMINISTRATIVELY CLOSE INDIVIDUAL CHAPTER 11 CASE ENTERED 4-14-20**

Tentative Ruling:

Tentative for 3/25/20:

Continue to July 22, 2020 at 10:00 a.m. with expectation of a motion closing the case will be filed in meantime.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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?

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10:00 AM

CONT... John J Trejo and Elsie Alfeche Baclayon

Chapter 11

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.

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.

Tentative for 3/20/18:
Status? See #13.

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CONT... John J Trejo and Elsie Alfeche Baclayon

Chapter 11

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

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10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

**#8.00 Post Confirmation Status Conference
(con't from 6-24-2020 per order to continue entered 3-20-20)**

Docket 1

Tentative Ruling:

Tentative for 7/22/20:

Set continued post confirmation status hearing in about 120 days.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 3/4/20:

Continue for further status conference in about 120 days.

Tentative for 11/13/19:

Continue status conference approximately 120 days.

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CONT... Gregory Anton Wahl

Chapter 11

Tentative for 7/17/19:
See #2

Tentative for 6/17/19:
Status?

Tentative for 5/30/19:
Status?

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.

Tentative for 11/28/18:
Status?

Tentative for 11/9/18:
No tentative.

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10:00 AM

CONT... Gregory Anton Wahl

Chapter 11

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

Tentative for 9/12/18:
Continue approximately 60 days to evaluate refinance efforts?

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

Party Information

Debtor(s):

Gregory Anton Wahl

Represented By
Christopher J Langley

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10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

#9.00 Motion For An Order Disallowing Proof Of Claim No. 2 (As Amended) Filed By Department Of Treasury - Internal Revenue Service Against Visiblegains, Inc (cont'd from 6-24-20 per order approving flfth stip. to cont. hrg entered 6--23-20)

Docket 85

Tentative Ruling:

Tentative for 7/22/20:

Several continuances have already been granted regarding processing of a form 940. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Sococo, Inc.

Represented By
Ron Bender
Krikor J Meshefejian
Lindsey L Smith

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10:00 AM

8:20-10680 Direct Sports Media Inc

Chapter 11

#10.00 Motion Of Debtor To Vacate Order

Docket 40

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION OF DEBTOR TO VACATE ORDER FILED
7-02-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Direct Sports Media Inc

Represented By
Matthew Fragner

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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10:00 AM

8:17-14351 Freda Philomena D'Souza

Chapter 11

#11.00 Motion Pursuant To 11 U.S.C. 1142 And 11 U.S.C. 105 To Require Creditor Samy S. Antoun And Samia Z. Antoun Trustees Of Samy And Samia Antoun Family Trust Dated September 9, 1986 To Advise On Amount Necessary To Cure Default/Reinstate Loan And Accept Payment From Reorganized Debtor

Docket 147

Tentative Ruling:

Tentative for 7/22/20:

This is Debtor, Freda Philomena D'Souza's ("Debtor's") Motion to require creditor Samy S. Antoun and Samia Z. Antoun Trustees of Samy and Samia Antoun Family Trust Dated September 9, 1986 ("Antoun") to advise on the amount necessary to cure default/reinstate loan and accept payment from Debtor pursuant to 11 U.S.C. §1142 and 11 U.S.C. §105. The motion is opposed by Antoun.

1. Brief Background

The facts are largely undisputed. Debtor filed a petition under Chapter 11 on November 1, 2017. An obligation is owed to Antoun for a promissory note that was secured against the Debtor's real property located at 167 Avenida Florencia, San Clemente, CA 92672 with a stated value of \$1.5 Million. The amount owed on the Antoun note was a little over \$600,000. On or about May 1, 2018, Debtor filed her Chapter 11 Plan that went out for a vote from the creditors within the Chapter 11 Proceeding (hereinafter "the Chapter 11 Plan").

On or about July 26, 2018, Debtor entered into a Stipulation for Plan Treatment with Antoun. Pursuant to the terms of the stipulated plan treatment, Debtor was to make monthly interval payments of \$3,680.07 for a period of 72 months, with a balloon payment of \$561,876.27 due on the 72nd month after

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CONT... Freda Philomena D'Souza

Chapter 11

the Effective Date of the Chapter 11 Plan. The Chapter 11 Plan was confirmed by order of the court on September 14, 2018. The Effective Date of the Chapter 11 Plan was September 29, 2018. Interval payments on the Antoun note would begin on October 1, 2018 pursuant to the terms of the stipulation (thus adopted as part of the plan). The interval payments of \$3,680.07 would continue thereafter monthly through October 1, 2026 (72 months), with a final balloon payment of \$561,876.27 being due on November 1, 2026. By January 7, 2019, the Debtor had already missed two payments to Antoun. Accordingly, on January 7, 2019, Antoun sent a Notice of Default to the Debtor ("First Notice of Default"). Debtor asserts that she made the following payments (i) \$3,680.07 on or about January 29, 2019 ("January Payment") and (ii) \$3,680.07 on or about March 1, 2019 ("March Payment"). Antoun apparently failed to process payments in a timely manner as required by the confirmed Chapter 11 Plan, and on June 13, 2019, Debtor filed an adversary proceeding seeking to remove the Debtor's obligations to pay the Antoun claim altogether. The Chapter 11 Plan contains a provision that removes the obligations of the Debtor to pay a creditor that did not timely process payments. Antoun filed a summary judgment motion, which was granted by the court finding that the provision in the plan was unenforceable, both as offensive to equity and because Debtor, having defaulted under the plan, was in no position to require strict performance from Antoun.

On December 2, 2019, Debtor tendered to Antoun certified funds in the amount of \$44,160.84 (hereinafter "the certified funds") to cover all outstanding monthly payments that were due on the Antoun Note through December 31, 2019. Antoun refused to accept the payment. Since that time, Debtor's counsel has apparently repeatedly offered the certified funds to Antoun through counsel, specifically advising that the funds were not being tendered for any reason other than to pay Antoun the full amount due on his interval payments. As such, Debtor asserts that she has repeatedly requested a statement of any additional amount that Antoun believes is necessary to cure any default and to fully reinstate the loan, but no such amount has ever

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been provided.

Chapter 11

In January 2020, Debtor sent the January interval payment to Antoun as required, but the January payment was not processed by Antoun. In February, Antoun through counsel allegedly returned the payment to Debtor. In late January 2020, Debtor sent the February interval payment to Antoun as required, but as of the filing of this motion (March 30, 2020), the February payment has allegedly not been processed by Antoun either. As of the filing of this motion, Debtor asserts that Antoun has not accelerated the Antoun Note nor mailed the Debtor any (further?) notice of default. The payments sent by Debtor to Antoun allegedly remain unprocessed. Debtor asserts that she is fully ready and capable to pay the arrears but cannot do so unless she is advised as to the amount due.

Before moving to the legal issues, the court must express its exasperation. That something as simple, and some might say as obvious, as this dispute should require the time of the court is a very sad testament not only to the dysfunctional relationship between Antoun and Debtor and to their total lack of cooperation, but also to a surprisingly combative attitude which cannot be but both expensive and harmful. The blame is not one-sided, as it likely got started by an inexplicably lackadaisical approach by Debtor in paying late or not at all, who then attempted ambush by an outrageously offensive plan provision which, had the court seen earlier, would have ended up on the cutting room floor. But now, the creditor won't even deign to state the amount owed. Incredible!

2. Legal Questions

The main question is, does Debtor have a right to cure the default pursuant to Cal. Civ. Code §2924c? This statute "provides that when a mortgage loan is accelerated as a result of a borrower's default, the borrower can reinstate the loan by paying all amounts due, 'other than the portion of

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principal as would not then be due had no default occurred.'" *Taniguchi v. Restoration Homes LLC*, 43 Cal. App. 5th 478, 483 (2019) (internal citation omitted). "That is, the borrower can cure the default and reinstate the loan by paying the amount of the default, including fees and costs resulting from the default, rather than the entire accelerated balance." *Id.* "The mortgage lender must inform the borrower of the correct amount due to reinstate the loan." *Id.* at 483-84. In explaining the policy behind this statute, the *Taniguchi* court stated that the rule was intended to save equities in homes built up through years of payments and observed that "[t]he right to make up payments in default and thus avoid calling the entire loan and sale under a trust deed is good public policy at any time." *Id.* at 484.

Antoun provides nearly no analysis to dispute that §2924c applies to this case, instead noting that the case law demonstrates the difficulty in applying the statute to modifications. In reading the case law, it seems likely that 2924c would apply here, as it ultimately did in *Taniguchi*. As the *Taniguchi* court concluded, "for purposes of section 2953, the Taniguchis' Modification is appropriately viewed as the making or renewal of a loan secured by a deed of trust. It is thus subject to the anti-waiver provisions of section 2953. Section 2924c gives the Taniguchis the opportunity to cure their precipitating default (that is, the missed modified monthly payments) by making up those missed payments and paying the associated late charges and fees, and in that way to avoid the consequences of default on the modified loan." *Id.* at 490. Antoun also does not directly dispute that Debtor has attempted to make payments intended to cure the default or that the exact amount required to cure the default has been withheld. The court does not understand Antoun's position. The court remembers Debtor's attempt to cancel the debt through a sneaky and unenforceable provision in the plan and understands if Antoun is suspicious of Debtor's motives. However, it does appear that Debtor is evidencing a willingness to pay what she owes under the agreement to bring her payments current and cure the default. The closest Antoun comes to an explanation is an argument based apparently on the court's summary judgment decision where the court observed that a

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material default under the plan forgives counter performance. This is a basic precept of contract law, and for many purposes plans are treated as contracts. That was raised in the context of why the offensive plan provision should not be enforced. But that is a long way from Antoun then arguing that a plan default waives all other provisions of ancillary contracts, such as the underlying deed of trust, or provisions of California law. That is an illogical assumption largely because Antoun wants, at some level, provisions of the trust deed and California law to still apply (otherwise, no foreclosure?)

Perhaps Antoun does not trust Debtor's ability to remain current on payments, which would lead to constant loop of default and cure, default and cure. The court is sympathetic to that position and Antoun can take comfort in the knowledge that the court cannot tolerate such a situation for long. But, if Debtor can cure the default, and remain current on payments going forward, what is the problem? How is Antoun being disadvantaged if it is being paid because in the end that is all that Antoun is owed? It seems that insisting on going to state court to pursue remedies is premature, especially as Debtor would likely raise §2924c again, requiring further litigation. The court also observes that, although Antoun is correct that issuing the order requested by Debtor would, in some ways, be akin to an injunction or declaratory relief, the court does have 11 U.S.C. §105(a) at its disposal, which gives the court some latitude to issue the order requested. To be clear, all that Debtor is requesting through this motion is a simple number that the court expects Antoun could easily provide, and that Antoun simply accept payment of what it is owed. The declaration of Jeffrey Golden states that Antoun is owed the full debt amount in excess of \$900,000 and that the cure amount is in excess of \$360,000 (See Opp. Ex. 1). The cure amount appears to be quite high. The motion is requesting that monthly payments under the agreement be allowed to resume, once the cure amount is known. It does not seem possible that over \$300,000 could have accrued since the default occurred, but since little explanation is offered, the court cannot be sure.

However, to some extent the parties may be carrying their dispute into

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the realm of state law to which this court has little reason to opine and will abstain. So, the court feels that requiring Antoun to state the amount owed with particularity is appropriate; this is because it might be argued that we got to this juncture because of unique plan provisions and the court's earlier summary judgment, all of which can be said are "arising under" Title 11. The statement must also contain an itemization and explanation. However, if the amount of the arrearage or the ability to accelerate and deny opportunity to cure are somehow governed under California law and not the plan, the court will abstain from that dispute and Debtor will have to commence an action there. At this juncture the court will allow the parties to work out whether the bankruptcy injunction of §1141 has application. All that requires is that parties abide by the plan. But the court cannot tell on this record whether Antoun is arguing that the plan is being complied with because of rights under state law. If so, that will be the province of the state court.

Grant. Require Antoun to state and explain amount needed to cure within ten days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Freda Philomena D'Souza

Represented By
Michael Jones

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Sara Tidd

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8:17-14351 Freda Philomena D'Souza

Chapter 11

#12.00 Motion Pursuant To 11 USC 1142 and 11 USC 105 to Require Creditor To Complete Novation Contained Within The Confirmed Chapter 11 Plan

Docket 149

Tentative Ruling:

Tentative for 7/22/20:

Creditor requests a continuance. The court will grant a continuance to a convenient date.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Freda Philomena D'Souza

Represented By
Michael Jones
Sara Tidd

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8:19-11458 2045 E Highland, LLC

Chapter 11

#13.00 Debtor's Disclosure Statement Describing Chapter 11 Plan Of Reorganization
(con't from 5-06-20)

Docket 64

Tentative Ruling:

Tentative for 7/22/20:

Despite several continuance nothing new has been filed. Convert to Chapter 7.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/6/20:

The court issued its tentative 2/26 pointing out various deficiencies in the disclosure statement, as drafter. Although various events have occurred in the case, such as a sale of real property, the disclosure statement has not changed. Why haven't we seen an amended disclosure statement?

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:

This is the debtor's motion to approve as adequate its revised Disclosure Statement to accompany its First Amended Plan. The Disclosure Statement is still not adequate for at least the following reasons:

1. Sale of the real property in San Juan Capistrano, the premises for debtor's business, is promised no later than February 28, 2020. But just how this is to be accomplished without a §363(f) order is not explained and it is obvious that a plan providing for same is not yet possible. This needs better explanation and/or a more realistic timetable.
2. The plan still needs a better discussion as to how the equity interests are being treated. Presumably this belongs in Class 4 and there should be there a discussion about the absolute priority rule and the contribution of \$20,000 in new value. Further, some discussion as to how/why that is the proper number is necessary given the requirements of "market testing" found in *Bank of America NT & SA v. 203 N. La Salle Street Partnership* 526 U.S. 434 (1999) would be in order.
3. The description about discharge at 21:1-3 should be corrected in view

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of §1141(d)(3) as suggested by the United States Trustee.

4. As indicated in the opposition of Seacoast Commerce Bank a better job could be done explaining how this plan is feasible if, as Seacoast argues, only about \$13,000 is available on a net basis for monthly debt service after costs of operation. Normally, feasibility is a confirmation issue, but this would be the opportunity to explain in simple terms how this works.
5. Some discussion about the alleged \$150,000 loan to an insider needs to be discussed and if it is not to be pursued, why.
6. A consistent explanation as to whether Northeast Bank is truly a fully secured creditor at \$93,118 including post-petition assets is necessary, in order to evaluate the best interest of creditors test, as Seacoast argues.
7. Some discussion about the pending litigation against Seacoast is also necessary. Is this to be pursued post confirmation? If so, how is the litigation to be funded and what goal is sought? If a judgment were achieved what becomes of the proceeds?

Deny

Tentative for 1/8/20:

This is debtor's motion for approval of disclosure statement as required under §1125(a)(1) as containing "adequate information." An adequacy finding is opposed in oppositions filed by both the UST and Seacoast Commerce Bank. The oppositions are both well taken, and the points raised need not be restated at elaborate length here. The court is primarily concerned about the following fundamental deficiencies:

1. The plan clearly violates the absolute priority rule found at §1129(b)(2)

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- (B)(ii). The plan proposes only 1% to unsecured creditors in installments yet the principals retain governance and stock ownership. Seacoast, which itself may be the largest unsecured creditor, plans to vote against. No new value is mentioned. So, unless something else is true this plan is patently unconfirmable, and distribution of a disclosure statement on such a plan is a waste of time and resources. While the court does not usually prejudge confirmation issues, this one is too fundamental to ignore, and so either amendment or at least explanation is required;
2. The proposed treatment of Seacoast 's secured claim is also very problematic. Debtor proposes either to cramdown a payment over 30 years at 5% or a "consensual sale" of the underlying real estate collateral. But the timing and conditions of the proposed sale are unstated, not made subject to conditions and are, thus, illusory. Can the debtor sell whenever it feels like it? Whenever in future it thinks the market has appreciated enough, even if that takes years, or never? The alternative treatment is also a non-starter. An effective 100% loan to value claim is far riskier than a more conventional loan usually made as a percentage of value. Consequently, the increased risk element must be accommodated (paid for), and anything less is a legally impermissible imposition of the risk upon the lender. See *In re North Valley Mall* ,432 B.R, 825 (Bankr. C.D. Cal. 2010). Although this is usually a confirmation issue, 5% is far too low for a commercial loan under any reasonable economic analysis, i.e. prime rate is 4.75% and must be "built up" from there even under a *Till* analysis. *North Valley Mall* is not the only analysis relied upon by courts, but this court happens to believe it is the most appropriate in a business, real estate context. Therefore, the court will not approve dissemination of disclosure upon such a patently unconfirmable plan.
 3. Feasibility is very questionable. Again, normally this is judged at confirmation, but the court does not ignore that the MORS show a

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generally declining cash position, and this is while there has been a 9-month moratorium in debt payments. Had even reduced payments been made the debtor would be by now out of money. What, if anything, is expected to change this outlook?

Deny

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

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10:00 AM

8:19-11575 Brent M Giddens

Chapter 11

#14.00 Motion For Order Determining Value Of Collateral

Docket 92

Tentative Ruling:

Tentative for 7/22/20:

Debtor acknowledges he bears the burden of proof in this valuation motion under §506. He offers only his own declaration, which, although not entirely inadmissible as an owner, suffers from several problems such as the obvious self-interest as well as reductions dependent on expertise that the declarant does not evidentially possess (i.e. structural repairs, opinion on which side of the street is more valuable and the appropriate amount of reduction, even if true, etc.). Consequently, that burden is not carried. The IRS similarly offers declarations based on hearsay reports of computerized databases such as Zillow, or upon the county assessor, which is/are a notoriously inaccurate basis of current value. Moreover, the range of values, \$900,000 to \$1.3 million is significant and where the value falls may be quite significant (strategic) in determining treatment of junior liens. Consequently, the court cannot render an informed judgment on this record. Absent an agreed single appraiser, each side will be required to submit his/its own professional appraisal of the subject property. These are to be filed at least two weeks before the hearing. Depending on range of resulting values, there may be a further requirement of an evidentiary hearing. *Continue.*

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Chapter 11

Party Information

Debtor(s):

Brent M Giddens

Represented By
Andrew P Altholz

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11:00 AM

8:17-14351 Freda Philomena D'Souza

Chapter 11

#15.00 Motion Pursuant To 11 U.S.C. 1142 And 11 U.S.C. 105 To Require Creditor Samy S. Antoun And Samia Z. Antoun Trustees Of Samy And Samia Antoun Family Trust Dated September 9, 1986 To Advise On Amount Necessary To Cure Default/Reinstate Loan And Accept Payment From Reorganized Debtor

Docket 147

***** VACATED *** REASON: ADVANCED TO 7-22-20 AT 10:00 A.M. ON COURT'S OWN MOTION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Freda Philomena D'Souza

Represented By
Michael Jones
Sara Tidd

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11:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#16.00 Debtor's Disclosure Statement Describing Chapter 11 Plan Of Reorganization
(con't from 5-06-20)

Docket 64

***** VACATED *** REASON: ADVANCED TO 7-22-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

Tentative for 5/6/20:

The court issued its tentative 2/26 pointing out various deficiencies in the disclosure statement, as drafter. Although various events have occurred in the case, such as a sale of real property, the disclosure statement has not changed. Why haven't we seen an amended disclosure statement?

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:

This is the debtor's motion to approve as adequate its revised Disclosure Statement to accompany its First Amended Plan. The Disclosure Statement is still not adequate for at least the following reasons:

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1. Sale of the real property in San Juan Capistrano, the premises for debtor's business, is promised no later than February 28, 2020. But just how this is to be accomplished without a §363(f) order is not explained and it is obvious that a plan providing for same is not yet possible. This needs better explanation and/or a more realistic timetable.
2. The plan still needs a better discussion as to how the equity interests are being treated. Presumably this belongs in Class 4 and there should be there a discussion about the absolute priority rule and the contribution of \$20,000 in new value. Further, some discussion as to how/why that is the proper number is necessary given the requirements of "market testing" found in *Bank of America NT & SA v. 203 N. La Salle Street Partnership* 526 U.S. 434 (1999) would be in order.
3. The description about discharge at 21:1-3 should be corrected in view of §1141(d)(3) as suggested by the United States Trustee.
4. As indicated in the opposition of Seacoast Commerce Bank a better job could be done explaining how this plan is feasible if, as Seacoast argues, only about \$13,000 is available on a net basis for monthly debt service after costs of operation. Normally, feasibility is a confirmation issue, but this would be the opportunity to explain in simple terms how this works.
5. Some discussion about the alleged \$150,000 loan to an insider needs to be discussed and if it is not to be pursued, why.
6. A consistent explanation as to whether Northeast Bank is truly a fully secured creditor at \$93,118 including post-petition assets is necessary, in order to evaluate the best interest of creditors test, as Seacoast argues.

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7. Some discussion about the pending litigation against Seacoast is also necessary. Is this to be pursued post confirmation? If so, how is the litigation to be funded and what goal is sought? If a judgment were achieved what becomes of the proceeds?

Deny

Tentative for 1/8/20:

This is debtor's motion for approval of disclosure statement as required under §1125(a)(1) as containing "adequate information." An adequacy finding is opposed in oppositions filed by both the UST and Seacoast Commerce Bank. The oppositions are both well taken, and the points raised need not be restated at elaborate length here. The court is primarily concerned about the following fundamental deficiencies:

1. The plan clearly violates the absolute priority rule found at §1129(b)(2) (B)(ii). The plan proposes only 1% to unsecured creditors in installments yet the principals retain governance and stock ownership. Seacoast, which itself may be the largest unsecured creditor, plans to vote against. No new value is mentioned. So, unless something else is true this plan is patently unconfirmable, and distribution of a disclosure statement on such a plan is a waste of time and resources. While the court does not usually prejudge confirmation issues, this one is too fundamental to ignore, and so either amendment or at least explanation is required;
2. The proposed treatment of Seacoast's secured claim is also very problematic. Debtor proposes either to cramdown a payment over 30 years at 5% or a "consensual sale" of the underlying real estate collateral. But the timing and conditions of the proposed sale are unstated, not made subject to conditions and are, thus, illusory. Can the debtor sell whenever it feels like it? Whenever in future it thinks

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Chapter 11

the market has appreciated enough, even if that takes years, or never? The alternative treatment is also a non-starter. An effective 100% loan to value claim is far riskier than a more conventional loan usually made as a percentage of value. Consequently, the increased risk element must be accommodated (paid for), and anything less is a legally impermissible imposition of the risk upon the lender. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Although this is usually a confirmation issue, 5% is far too low for a commercial loan under any reasonable economic analysis, i.e. prime rate is 4.75% and must be "built up" from there even under a *Till* analysis. *North Valley Mall* is not the only analysis relied upon by courts, but this court happens to believe it is the most appropriate in a business, real estate context. Therefore, the court will not approve dissemination of disclosure upon such a patently unconfirmable plan.

3. Feasibility is very questionable. Again, normally this is judged at confirmation, but the court does not ignore that the MORS show a generally declining cash position, and this is while there has been a 9-month moratorium in debt payments. Had even reduced payments been made the debtor would be by now out of money. What, if anything, is expected to change this outlook?

Deny

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

United States Bankruptcy Court
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11:00 AM

8:19-11575 Brent M Giddens

Chapter 11

#17.00 Motion For Order Determining Value Of Collateral

Docket 92

*** VACATED *** REASON: ADVANCED TO 7-22-20 AT 10:00 A.M.
PER COURT'S OWN MOTION

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brent M Giddens

Represented By
Andrew P Altholz

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11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#18.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 4-29-20 per stip. to cont. hrgs entered 4-23-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-23-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE HEARINGS ON: (1)
CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR RELIEF
FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11 CASE AND
(4) OBJECTION TO AMENDED NOTICE ENTERED 7-02-20**

Tentative Ruling:

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#19.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 4-29-20 per order approving stip, to cont, hrgs entered
4-23-20)

PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR

Docket 53

***** VACATED *** REASON: CONTINUED TO 9-23-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE HEARING: (1) CH 11
STATUS CONFERENCE; (2) MOTION FOR RELIEF FROM
AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11 CASE AND (4)
OBJECTION TO AMENDED NOTICE 7-02-20**

Tentative Ruling:

Tentative for 2/26/20:

If all that is requested is that both sides be free to complete the state court action, including post trial motions and appeals, to final orders, that is appropriate. Enforcement stes will require further orders of this court.

Grant as clarified.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

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

Wednesday, July 22, 2020

Hearing Room 5B

11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#20.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 4-29-20 per order apprv g stip. to cont. hrgs, entered 4-23-20)

Docket 54

***** VACATED *** REASON: CONTINUED TO 9-23-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE HEARINGS ON: (1) CH
11 STATUS CONFERENCE; (2) MOTION FOR RELIEF FROM
AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11 CASE AND (4)
OBJECTION TO AMENDED NOTICE ENTERED 7-02-20**

Tentative Ruling:

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

1. Basic Background Facts

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately \$42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than \$25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not appear to be any other debts listed as disputed, contingent, or unliquidated.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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CONT... **Bridgemark Corporation**

Chapter 11

The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court trial this testimony was elicited:

"We cannot pay the 27 million We have no ability to pay any of this. ... I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done." Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the \$27 million in compensatory damages at \$1 million per year, interest-free, over 27 years. See *Id.* at 3156:20-23 ["We can't pay it. ... If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.... It just goes down and down and down." *Id.* at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

**United States Bankruptcy Court
Central District of California
Santa Ana
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11:00 AM

CONT...

Bridgemark Corporation

Chapter 11

2. Motion to Dismiss & Relief from Stay Standards

Section 1112(b) of the Bankruptcy Code provides:

"[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id.* § 1112(b)(4)(A), and "gross mismanagement of the estate," *Id.* § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section ... for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.'"]. Thus, the shorthand

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CONT... **Bridgemark Corporation**

Chapter 11

phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or feelings. Instead, the question is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.*

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. *See e.g., In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the litigation"; and

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CONT...

Bridgemark Corporation

Chapter 11

• "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes and citations omitted).

"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood)*, 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

3. Was Debtor's Petition Filed for a Proper Purpose?

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917–18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013) where the court found:

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CONT...

Bridgemark Corporation

Chapter 11

Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the judgment or cover the cost of a supersedeas bond. The bankruptcy court found that the Fraud Judgment amounted to over \$12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id.* It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation.'" *Marshall*, 721 F.3d at 1048

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CONT... **Bridgemark Corporation**

Chapter 11

(quoting 298 B.R. at 681)). PDC persuasively argues that it would inappropriate to infer a broader rule from *Marshall*. PDC argues with some persuasion that the other cases cited by Debtor were ones in which the courts based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id.* at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id.*

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately \$3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id.* at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id.* The debtor later amended his plan to provide that if the judgment were upheld on appeal, he would liquidate his assets and give the proceeds to the judgment creditor. *Id.* The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of

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CONT... **Bridgemark Corporation**

Chapter 11

the circumstances" warranted dismissal of the case for cause. *Id.* at *4.

PDC argues that Debtor has admitted in the authorizing resolution attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11" Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. After all, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to make a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), *aff'd*, 565 B.R. 527 (S.D.N.Y. 2017), *aff'd*, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets" As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26, 2011).

PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with

**United States Bankruptcy Court
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CONT... **Bridgemark Corporation**

Chapter 11

competing demands to Debtor's assets. All other claims against Debtor are *de minimis* relative to the Judgment, and also appear to be undisputed. Cf. *In re Mense*, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately \$4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than \$700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a

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CONT... **Bridgemark Corporation**

Chapter 11

reorganization is likely not feasible due to the enormous judgment debt and Debtor's ever diminishing product source. The court is also not impressed with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable

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CONT... **Bridgemark Corporation**

Chapter 11

extension to answer these questions about just how probable a reorganization is or can be despite these obstacles. In this the court is uninterested in platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§ 1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
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Wednesday, July 22, 2020

Hearing Room 5B

11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#21.00 Objection Of Placentia Development Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 4-29-20 per order apprvng stip. to cont. hrgs entered 4-23-20)

Docket 93

***** VACATED *** REASON: CONTINUED TO 9-23-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE HEARINGS ON: (1) CH
11 STATUS CONFERENCE; (2) MOTION FOR RELIEF FROM
AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11 CASE; AND (4)
OBJECTION TO AMENDED NOTICE ENTERED 7-02-20**

Tentative Ruling:

Tentative for 3/25/20:

Stipulation to continue to 4/29/20 expected per phone message. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 22, 2020

Hearing Room 5B

11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#22.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 4-29-20 per order on stip to cont. s/c entered 4-22-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-23-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO FURTHER CONTINUE HEARING
ON INITIAL STATUS CONFERENCE ENTERED 7-02-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Defendant(s):

Placentia Development Company

Pro Se

Plaintiff(s):

Bridgemark Corporation

Represented By
Erin E Gray
James KT Hunter
William N Lobel

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

Thursday, July 23, 2020

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

#1.00 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)
(cond't from 3-12-20)

Docket 1

Tentative Ruling:

Tentative for 7/23/20:

Continue to December 3, 2020 at 10:00am per request.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 3/12/20:

Status conference continued to June 25, 2020 at 10:00AM.

Tentative for 12/12/19:

Status conference continued to March 12, 2020 at 10:00AM. Appearance optional.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 23, 2020

Hearing Room 5B

10:00 AM

CONT... Stephen Nguyen

Chapter 7

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?

Party Information

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
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 23, 2020

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

- #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 3-5-2020)(rescheduled from 5-14-2020 at 10:00 a.m. per court)

Docket 1

Tentative Ruling:

Tentative for 7/23/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 3/5/20:
What is status of answer/default?

Tentative for 11/7/19:
Why no status report?

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

Thursday, July 23, 2020

Hearing Room 5B

10:00 AM

CONT... Zia Shlaimoun

Chapter 7

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
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

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

Thursday, July 23, 2020

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10:00 AM

CONT...

Zia Shlaimoun

Kathleen J McCarthy
Michael Jason Lee
Sunjina Kaur Anand Ahuja

Chapter 7

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

Thursday, July 23, 2020

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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.

#3.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
**(con't from 5-6-2020 per order approving stip to cont. s/c entered 4-23-20)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-24-20 AT 10:00 A.M.
PER ORDER APPROVING STIULATION TO CONTINUE STATUS
CONFERENCE ENTERED 7-16-20**

Tentative Ruling:

Tentative for 6/27/19:
Why no status report?

Party Information

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
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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

#4.00 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 6-25-20)**

Docket 1

Tentative Ruling:

Tentative for 7/23/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 6/25/20:
See #17.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:
See # 12-14.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys

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CONT... Richard Paul Herman Chapter 7

to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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 Jeanne M Jorgensen
--------------------------	--------------------------------------

Trustee(s):

Karen S Naylor (TR)	Represented By Nanette D Sanders
---------------------	-------------------------------------

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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 6-25-20)**

Docket 5

Tentative Ruling:

Tentative for 7/23/20:
This was continued for evaluation. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 6/25/20:

See #18.

Tentative for 4/29/20:
See #14.

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Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/26/20:

What is the status of this portion of the case?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

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?

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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 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

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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 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

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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 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-

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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 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

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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 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

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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 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.

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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

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
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Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

- #5.10** Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay
(set by Order entered 3-18-20)
(rescheduled from 4-28-2020 at 11:00 a.m. per court)

Docket 113

Tentative Ruling:

Tentative for 7/23/20:

New for 7/23: Mr. Herman's objection to order for sanctions and stay of proceedings pending appeal. Mr. Herman argues that he has appealed this court's contempt order, which divests this court of jurisdiction. This objection was filed on 6/26/20.

The objection is linked to the notice of lodgment of the order requiring Herman to pay \$2,000 as a sanction for his continuing violation of this court's May 11, 2020 contempt order.

Foothill and the Chapter 7 Trustee have filed a joint supplemental report noting Mr. Herman's continuing noncompliance. Per the report, Mr. Herman is continuing his campaign in state court asserting that this wife may make claims beyond that which this court set forth. The state court has apparently issued an OSC re dismissal and a separate OSC regarding the court's proposed transfer of the Surviving Claims to a court of limited jurisdiction (i.e. claims for damages of less than \$25,000). These matters are set for hearing on August 7, 2020. Unsurprisingly, Mr. Herman has also failed to pay the sanction to Foothill as ordered.

Regarding Mr. Herman's assertion that the appeal divests this court of jurisdiction over the contempt order, Foothill cites *Hoffman v. Beer Drivers and Salesmen's Local Union No. 88*, 536 F.2d 1268, 1276 (9th Cir. 1976) for the proposition that, in the context of contempt proceedings like the ones here, "where the court supervises a continuing course of conduct and where as new facts develop additional supervisory action by the court is required, an

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appeal from the supervisory order does not divest the [court] of jurisdiction to continue its supervision, even though in the course of that supervision the court act upon or modifies the order from which the appeal is taken.” Trustee further cites *Hughes v. Sharp*, 476 F.2d 975 (9th Cir. 1973), where the court noted, that when the contemnor is a party to the pending proceedings, and when those proceedings are still under way, the court lacks jurisdiction to consider the purported appeal from a contempt order as that order is interlocutory. The court stated that although this may seem harsh, a contemnor is not without recourse, as among his options is purging his contempt. *Id.* Foothill also notes that the notice of appeal was untimely and that a new appeal cannot be initiated by simply amending the notice of appeal; a new notice of appeal is required.

By contrast, Mr. Herman's objection is completely devoid of analysis and contains only vague citations to cases standing for the broad proposition that an appeal divests the bankruptcy court of jurisdiction over those aspects of the case involved in the appeal. But those cases cited by Mr. Herman do not undercut the cases cited by Foothill. Mr. Herman has not filed anything responsive to Foothill's supplemental report.

The message that the court sent to Mr. Herman at the last hearing on 6/25 was apparently not received, even when Mr. Herman was unambiguously ordered to pay a sanction of \$2,000 to Foothill to put a sharper point on the message. Mr. Herman seems to be operating on the misguided assumption that his appeal puts him out of reach of this court, leaving him free to pursue conduct this court has already characterized as contumacious. However, as the case law cited above demonstrates, the court remains vested with the power to monitor Mr. Herman's ongoing misconduct, and modify the contempt order as necessary.

The court has already noted that Mr. Herman is playing with fire by continuing to ignore this court's orders. It does not appear, however, that Mr. Herman is altering his course. Rather, he persists, relying on legalistic arguments about finality of orders which, as explained above, are not persuasive. But this course is causing real, continuing damages to Foothill. So, the court has little choice but to raise the stakes in hopes of reaching the requisite coercion threshold. The sanction is doubled to \$4,000, payable forthwith to Foothill.

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The court notes that the Superior Court has now also scheduled this matter on order to show cause for August 7, 2020. A further hearing will be scheduled for a mutually convenient date after August 7 to evaluate where we stand and whether yet more coercion is needed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 6/25/20:

Following the hearing on the OSC re: Contempt on April 29, Foothill Financial and Trustee jointly lodged an order on April 30. The official order issued on May 11. Mr. Herman filed an untimely objection to the lodged order.

To accompany his objection to the lodged order, Mr. Herman attached his own proposed order, which bears little resemblance to the actual ruling on the OSC and several other orders issued by this court.

The most consequential rewrite Mr. Herman makes to his proposed order is where he states that per our abstention order, he is allowed to pursue in state court all claims that may belong solely to his wife with no limit on value. This is despite the many orders issued by this court where the specific claims the court abstained from are listed. Foothill's response catalogues the various orders and judgments with the court's very clear language articulating the narrow scope of its abstention.

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Mr. Herman appears to have seized upon the most miniscule ambiguity to deliberately disregard the language and spirit of this court's orders in an attempt to reframe his dismissed claims as belonging solely to his wife, thereby allowing him to re-litigate them in state court. Mr. Herman may have already filed a version of his order with the state court. Foothill and Trustee are understandably dismayed by this latest attempt to hinder and delay.

In light of this most recent and fairly egregious transgression, Foothill requests that the court now impose monetary sanctions. Foothill suggests that Mr. Herman should pay the fees incurred by Foothill as a result of Mr. Herman's ongoing contempt, which Foothill estimates in its status report at \$7,500.

Mr. Herman has filed his own status report asserting that the contempt order is on appeal and there is nothing else to be adjudicated by this court at this time, all matters now being with the district court.

Mr. Herman is playing with fire. Rather than displaying even a modicum of compunction after being adjudged to be in contempt, Mr. Herman asserts in his objection that his contempt is now purged, and that it never truly existed in the first place. Mr. Herman, we should not forget, is also an attorney, and is presumed to be able to understand court orders and the consequences for disregarding them. Thus, a measured and modest monetary sanction is likely appropriate, with the promise of more severe sanctions to follow if Mr. Herman continues to misconduct himself.

The court requests an update on whether Mr. Herman actually lodged a bogus form of order with the state court. Impose monetary sanctions of \$2000 payable jointly to Foothill and Trustee.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys

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to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

- (a) Why he should not be held in contempt for
 - i. his continuing efforts to exercise control over and interfere with the dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and
 - ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.

- (b) Why he should not be subjected to the following sanctions:
 - i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and
 - ii. Compensatory damages incurred by Foothill and the Trustee as a result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred

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Richard Paul Herman

Chapter 7

by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely responses.

Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really

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attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the Trustee has sought damages under 11 U.S.C. § 362(k), but rather this proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted). Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing

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and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2) affirming to the State Court that the only cause of action that the Hermans assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "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) Debtor's "claim 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."

2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined

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above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

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

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Jeanne M Jorgensen

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

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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
(cont'd from 5-6-2020 per order continuing s/c entered 5-01-2020)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-24-2020 AT 10:00 A.M.
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 7-08-20**

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
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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.

**#7.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 5-6-2020 per order continuing s/c entered 5-01-2020)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-24-2020 AT 10:00 A.M.
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 7-08-20**

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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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.

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 5-6-2020 per order continuing s/c entered 5-6-2020)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-24-20 AT 10:00 A.M.
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 7-08-20**

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

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8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Global Approach, Inc. et al v. Rock Star Beverly Hills LLC et al

**#9.00 STATUS CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(cont'd from 5-27-20)**

Docket 1

Tentative Ruling:

Tentative for 7/23/20:

Does the court understand correctly that the matter is not yet at issue as there has been an answer and counterclaim? Discovery on all claims cutoff November 1, 2020. Last date to file pretrial motions December 11 2020. Pretrial conference Jan. 14, 2021@ 10:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/27/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

If the court understands correctly, it is Plaintiff's wish to remain in the Bankruptcy Court and proceed to default and default prove-up. There appears to be no reason not to do this since, unlike contested matters where the court is deferential to sister courts, especially when the proceedings are well-advanced and other non-debtor parties are actively involved, none of those issues pertain here. But there is a large standing issue. Such matters as these belong not to the prosecuting plaintiff alone but to the estate once a bankruptcy is filed. Consequently, the court expects the Plaintiff to contact the Trustee and make suitable arrangements about matters including: (1) continued representation and employment of counsel; (2) substitution of real party in interest and (3) language of the default judgment, findings and evidence to be submitted in support.

The OSC is satisfied and discharged, and the matter will be continued about 60 days as a status conference.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/1/20:

Why should the court not remand? The court is also interested to know if the Chapter 7 Trustee intends to intervene as real party in interest. Continue for these answers.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

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CONT... Igor Shabanets

Chapter 7

Plaintiff(s):

Global Approach, Inc.

Represented By
Alan W Forsley
Bobby Benjy

Remares Global, LLC

Represented By
Alan W Forsley
Bobby Benjy

Trustee(s):

Richard A Marshack (TR)

Pro Se

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10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01041 Marshack v. West Coast Business Capital LLC et al

#10.00 STATUS CONFERENCE RE: Complaint For 1. Declaratory Relief; 2. Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550; 3. Avoidance of Lien and Equitable Subordination Pursuant to 11 U.S.C. Section 510(c); 4. Avoidance and Preservation of Claims Pursuant to 11 U.S.C. Section 502, 506, 544, and 510(c); 5. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 548 and 550; 6. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 544, 548 and 550; and 7. Usury and Unjust Enrichment/Disgorgement; 8. Injuntion; 9. Determination of Liens Pursuant to 11 U.S.C. Section 502, 506 and 551; Unconscionability; 11. Violation of N.Y. General Business Law Section 349; 12. Violation of California Business and Professions Code Section 17200; 13. Fraud **(rescheduled from 6-11-2020 at 10:00 a.m. per court)**
(cont'd from 6-10-20 per order approving stip. to cont. s/c entered 6-04-20)

Docket 1

Tentative Ruling:

Tentative for 7/23/20:

Status of answer/default? Discovery cutoff Jan. 2, 2021. Last date for filing pretrial motions January 15, 2020. Pretrial conference February 25, 2021.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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CONT... i.i. Fuels, Inc.

Chapter 7

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Pro Se

Vernon Capital Group LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

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8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

- #11.00** STATUS CONFERENCE RE: Complaint For 1. Declaratory Relief; 2. Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550; 3. Avoidance of Lien and Equitable Subordination Pursuant to 11 U.S.C. Section 510(c); 4. Avoidance and Preservation of Claims Pursuant to 11 U.S.C. Section 502,506,544, and 510(c); 5. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 548 and 550; 6. Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. Section 544, 548 and 550; 7. Usury and Unjust Enrichment/Disgorgement; 8. Injuntion; 9. Determination of Liens Pursuant to 11 U.S.C. Section 502, 506 and 551; Unconscionability; 11. Violation of N.Y. General Business Law Section 349; 12. Violation of California Business and Professions Code Section 17200; 13. Fraud; 14. Negligence Per Se - Violation of California Finance Lending Law **(rescheduled from 6-11-2020 at 10:00 a.m. per court)**
(cont'd from 6-10-20 per order approving stip. to cont. s/c entered 6-04-20)

Docket 1

Tentative Ruling:

Tentative for 7/23/20:
Same schedule as #10.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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CONT... i.i. Fuels, Inc.

Chapter 7

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited Pro Se

EBF Partners LLC, a Delaware Pro Se

Forward Financing LLC, a Delaware Pro Se

Mantis Funding LLC, a Delaware Pro Se

NEXGEN Capital Limited Liability Pro Se

Queen Funding LLC, a New Jersey Pro Se

Yes Funding Corp., a New York Pro Se

Atlas Acquisitions, LLC, a New Pro Se

Capital Stack Fund II LLC, a Pro Se

New Era Lending, a California Pro Se

Arch Capital Advisors, Inc., a Pro Se

CoreFund Capital, LLC, a Texas Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01066 Remares Global LLC v. Marshack et al

#12.00 STATUS CONFERENCE RE: First Amended Complaint for Declaratory Relief Regarding Validity, Extent and Priority of Judgment Lien as to 9875 Rimmele Dr., Beverly Hills CA
(another summons issued on 5-8-2020)

Docket 5

Tentative Ruling:

Tentative for 7/23/20:
Same schedule as #9.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court’s website has been updated with this new information.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Richard A Marshack

Pro Se

Igor Shabanets

Pro Se

IOS PROPERTIES, LLC

Pro Se

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10:00 AM

CONT... Igor Shabanets

Chapter 7

Plaintiff(s):

Remares Global LLC

Represented By
Alan W Forsley

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#13.00 STATUS CONFERENCE RE: Complaint to Determine Non-Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2)(A),(a)(2)(B), and (a)(6)

Docket 1

Tentative Ruling:

Tentative for 7/23/20:

Discovery cutoff November 1, 2020. Last date for pretrial motions December 1. Pretrial conference January 7, 2021 @ 10:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Pro Se

Plaintiff(s):

Porsche Leasing Ltd.

Represented By
Stacey A Miller

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10:00 AM

CONT... Igor Shabanets

Chapter 7

Porsche Financial Services Inc

Represented By
Stacey A Miller

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 23, 2020

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5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01078 Remares Global, LLC, a Florida limited liability c v. Marshack et al

#14.00 STATUS CONFERENCE RE: Complaint for Declaratory Relief Regarding Validity, Extent and Priority of Judgment Lien as to 2 Monarch Cove, Dana Point, CA

Docket 1

Tentative Ruling:

Tentative for 7/23/20:
Same schedule as #9.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Richard Marshack

Pro Se

Igor Shabanets

Pro Se

Rock Star Beverly Hills, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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CONT... Igor Shabanets

Chapter 7

Plaintiff(s):

Remares Global, LLC, a Florida

Represented By
Alan W Forsley

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
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Thursday, July 23, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01079 Remares Global, LLC, a Florida limited liability c v. Shabanets et al

#15.00 STATUS CONFERENCE RE: Complaint for Declaratory Relief Regarding (1) The Validity, Extent and Priority of Judgment Lien as to Certain Funds Deposited in the Bankruptcy Court's Registry and (2) Whether Some of the Funds are not Property of Debtor's Bankruptcy Estate

Docket 1

Tentative Ruling:

Tentative for 7/23/20:
Same schedule as #9.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Pro Se

Olga Shabanets

Pro Se

Olga Shabanets, as trustee of the

Pro Se

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

Thursday, July 23, 2020

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

Richard A Marshack

Pro Se

Plaintiff(s):

Remares Global, LLC, a Florida

Represented By
Alan W Forsley

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**

Thursday, July 23, 2020

Hearing Room 5B

10:00 AM

8:18-11185 Richard Ryan Farino

Chapter 7

Adv#: 8:18-01134 Hile v. Farino

- #16.00** PRE-TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt pursuant to 11 U.S.C. Section 523(a)(2)(A) (cont'd from 3-05-20 per orde regarding continuing dates listed in the prior schedule order entered 2-12-20)

Docket 1

Tentative Ruling:

Tentative for 7/23/20:

Order approving pre-trial stipulation is needed. Schedule trail date.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

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

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

Thursday, July 23, 2020

Hearing Room 5B

10:00 AM

CONT... Richard Ryan Farino

Chapter 7

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, July 23, 2020

Hearing Room 5B

10:00 AM

8:18-13420 Kevin Sadeghi

Chapter 7

Adv#: 8:19-01185 Marshack v. Sadeghi et al

#17.00 PRE-TRIAL 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
(set from s/c hrg held on 12-5-19)

Docket 2

Tentative Ruling:

Tentative for 7/23/20:

Is this matter resolved by motion to approve settlement on 6/26/2020? If so, an order on that hearing is needed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

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.

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

Thursday, July 23, 2020

Hearing Room 5B

10:00 AM

CONT... Kevin Sadeghi

Chapter 7

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, July 23, 2020

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.

#18.00 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) (rescheduled from 4-9-2020 per court) (cont'd from 5-6-20 per order approving stipulation entered 5-04-20)

Docket 6

***** VACATED *** REASON: CONTINUED TO 9-24-20 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 6-26-20**

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, July 23, 2020

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, July 23, 2020

Hearing Room 5B

11:00 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

#19.00 Motion For Default Judgment

Docket 81

***** VACATED *** REASON: RE-SCHEDULED TO 7-23-20 AT 2:00 P.M.
PER COURT'S ORDER**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash
David B Shemano

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
Oussha Shlaimoun	Pro Se
Nico Aksel Leos Shlaimoun	Pro Se

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

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

CONT... Zia Shlaimoun Chapter 7

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
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, July 23, 2020

Hearing Room 5B

11:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

Adv#: 8:19-01042 Laski v. Almada et al

**#20.00 Application And Order For Appearance Of Anthony Almada To Enforce
Judgment Of Debtor Examination
(con't from 4-15-20 per order entered 4/14/2020)**

Docket 48

***** VACATED *** REASON: RE-SCHEDULED TO 7-23-20 AT 2:00 P.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

- NONE LISTED -

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
M Douglas Flahaut

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**

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

CONT... Vitargo Global Sciences, Inc.

Leonard M Shulman
Ryan D O'Dea

Chapter 11

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

Thursday, July 23, 2020

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

- #21.00** Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay
(set by Order entered 3-18-20)
(cont'd from 6-25-20)

Docket 113

***** VACATED *** REASON: RE-SCHEDULED TO 2:00 P.M. OWN
COURTS OWN MOTION**

Tentative Ruling:

Tentative for 6/25/20:

Following the hearing on the OSC re: Contempt on April 29, Foothill Financial and Trustee jointly lodged an order on April 30. The official order issued on May 11. Mr. Herman filed an untimely objection to the lodged order.

To accompany his objection to the lodged order, Mr. Herman attached his own proposed order, which bears little resemblance to the actual ruling on the OSC and several other orders issued by this court.

The most consequential rewrite Mr. Herman makes to his proposed order is where he states that per our abstention order, he is allowed to pursue in state court all claims that may belong solely to his wife with no limit on value. This is despite the many orders issued by this court where the specific claims the court abstained from are listed. Foothill's response catalogues the various orders and judgments with the court's very clear language articulating the narrow scope of its abstention.

Mr. Herman appears to have seized upon the most miniscule ambiguity to deliberately disregard the language and spirit of this court's orders in an attempt to reframe his dismissed claims as belonging solely to his wife, thereby allowing him to re-litigate them in state court. Mr. Herman may have already filed a version of his order with the state court. Foothill and Trustee are understandably dismayed by this latest attempt to hinder and delay.

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

Thursday, July 23, 2020

Hearing Room

5B

11:00 AM

CONT... Richard Paul Herman

Chapter 7

In light of this most recent and fairly egregious transgression, Foothill requests that the court now impose monetary sanctions. Foothill suggests that Mr. Herman should pay the fees incurred by Foothill as a result of Mr. Herman's ongoing contempt, which Foothill estimates in its status report at \$7,500.

Mr. Herman has filed his own status report asserting that the contempt order is on appeal and there is nothing else to be adjudicated by this court at this time, all matters now being with the district court.

Mr. Herman is playing with fire. Rather than displaying even a modicum of compunction after being adjudged to be in contempt, Mr. Herman asserts in his objection that his contempt is now purged, and that it never truly existed in the first place. Mr. Herman, we should not forget, is also an attorney, and is presumed to be able to understand court orders and the consequences for disregarding them. Thus, a measured and modest monetary sanction is likely appropriate, with the promise of more severe sanctions to follow if Mr. Herman continues to misconduct himself.

The court requests an update on whether Mr. Herman actually lodged a bogus form of order with the state court. Impose monetary sanctions of \$2000 payable jointly to Foothill and Trustee.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

CONT... Richard Paul Herman

Chapter 7

Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

(a) Why he should not be held in contempt for

- i. his continuing efforts to exercise control over and interfere with the dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and
- ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.

(b) Why he should not be subjected to the following sanctions:

- i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and
- ii. Compensatory damages incurred by Foothill and the Trustee as a result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely responses.

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

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

CONT...

Richard Paul Herman

Chapter 7

Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the Trustee has sought damages under 11 U.S.C. § 362(k), but rather this proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for

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

Thursday, July 23, 2020

Hearing Room

5B

11:00 AM

CONT...

Richard Paul Herman

Chapter 7

this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted). Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2) affirming to the State Court that the only cause of action that the Hermans assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "claim for

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

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

CONT... Richard Paul Herman

Chapter 7

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) Debtor's "claim 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."

2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Thursday, July 23, 2020

Hearing Room

5B

11:00 AM

CONT... Richard Paul Herman

Chapter 7

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

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, July 23, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01041 Marshack v. West Coast Business Capital LLC et al

#22.00 Defendant's West Coast Business Capital, LLC's Motion To Dismiss 12(b)(1)(6) (cont'd from 7-02-20 per order approving stip. to cont. motion to dismiss entered 6-18-20)

Docket 27

***** VACATED *** REASON: RE-SCHEDULED TO 7-23-20 AT 2:00 P.M.
PER COURT ORDER**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Represented By
Michael W Davis

Vernon Capital Group LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
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, July 23, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#23.00 Defendant EBF Partners, LLC's Motion to Dismiss Complaint For Failure To State A Claim For Relief And For More Definite Statement
(cont'd from 7-02-20 per order approving stip. to cont. mtn to dismiss entered 6-18-20)

Docket 79

***** VACATED *** REASON: RE-SCHEDULED TO 7-23-20 AT 2:00 P.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

Yes Funding Corp., a New York

Pro Se

Atlas Acquisitions, LLC, a New

Pro Se

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

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

CONT... i.i. Fuels, Inc. Chapter 7

Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

8:18-10582 David R. Garcia

Chapter 7

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

**#24.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(con't from 5-14-20 per stip. & order entered 3-18-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-10-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE AND DEADLINE TO FILE PRE-TRIAL MOTIONS
ENTERED 6-19-20**

Tentative Ruling:

Tentative for 12/5/19:
Status?

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.

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

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.

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

Thursday, July 23, 2020

Hearing Room 5B

11:00 AM

CONT... David R. Garcia

Chapter 7

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
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, July 23, 2020

Hearing Room 5B

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8:17-10976 Zia Shlaimoun

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Adv#: 8:19-01045 Thomas H. Casey, Trustee of the Zia Shlaimoun Ch. v. Shlaimoun et al

**#25.00 Motion For Default Judgment
(re-scheduled from 7-23-20 at 11:00 a.m. per court order)**

Docket 81

Tentative Ruling:

Tentative for 7/23/20:

This is the chapter 7 trustee, Thomas H. Casey's ("Trustee's") motion for default judgment sought against defendant, Helen Shlaimoun ("Defendant"). Trustee seeks recovery of \$707,100 in transfers made by debtor, Zia Shlaimoun ("Debtor") to Defendant pursuant to Cal. Civ. Code. § 3439.04. Defendant is Debtor's mother. Defendant has not filed an opposition (or anything responsive) to the motion.

1. Background

As related by Trustee, in 2010, the Debtor engaged in a fraudulent scheme whereby he defrauded unwitting fraud victims of over \$10,000,000. Hybrid Finance, Ltd. ("Hybrid"), the largest creditor in the main bankruptcy action, was defrauded of \$1,000,000. Debtor had proposed a scheme where he would use Hybrid's investment of \$1,000,000 to "lease" an account worth \$100,000,000 from Nat West Bank, and the Debtor would use that leased account to fund trades. Hybrid was told that the trades would be so profitable that the \$1,000,000 could be repaid at the end of the lease with profits. Hybrid was persuaded by Debtor and decided to invest in or around June of 2010. Unfortunately, Debtor did not use the monies for an investment, instead, he funneled the monies toward the purchase of a \$15,000,000 mansion in Malibu, California. Hybrid was never returned the funds it invested, and it filed suit against Debtor in 2014.

The Hybrid litigation consisted of two actions. The first action was

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against Debtor individually and the second action was against his 99.9% owned entity Versailles Investments, LLC. Both actions were consolidated and tried together. Hybrid obtained a temporary restraining order against Versailles Investments, LLC on January 15, 2015. The injunction prevented Versailles and its agents from transferring or dissipating any proceeds from the sale of the Malibu Property. The sale proceeds were north of \$3,000,000 and initially went into the attorney client trust account of Debtor's attorney, Kenneth Catanzarite, Esq. ("Catanzarite"). Thereafter, Catanzarite dispersed the funds at the direction of Debtor. The Hybrid lawsuit culminated in a judgment of over \$2,661,457, against Debtor, inclusive of punitive damages. Judgment was entered on September 5, 2017 and is now, with prejudgment interest, in excess of \$3,000,000.

2. The Fraudulent Transfers

The largest transfer from Debtor to Defendant was for \$684,000, and it was made on January 20, 2015 – five days after a temporary restraining order was issued against Versailles. A few days before Debtor's transfer to Defendant, his counsel, Catanzarite, transferred \$840,000 of the Malibu mansion sale proceeds to Debtor.

At Exhibit "A" of his declaration Catanzarite states that he transferred \$600,000 of the sale proceeds to Debtor on January 5, 2015 and an additional \$240,000 of sale proceeds to Debtor on January 13, 2015. The temporary restraining order eventually culminated into a preliminary injunction. From the order of events, Trustee asserts that it appears clear Debtor transferred over \$684,000 of funds to his mother on January 20, 2015 in an attempt to prevent his creditors from accessing those funds and likely in violation of the court order preventing the transfer of those funds.

The transfers made to Defendant by Debtor were as follows:

- a. On January 10, 2015, the Debtor issued \$100 to Defendant. See

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Ahuja Decl. at ¶9, Exhibit "6".

b. On or about January 20, 2015, the Debtor issued a cashier's check to Defendant in the amount of \$684,000.00. Within one week, \$680,000 of these funds were moved to a Wells Fargo account vested in the name of Gold Star Group, LLC. See Ahuja Decl. at ¶9, Exhibit "7". The lone signer on the account was Defendant; however, the Debtor retained control of the account and prepared and signed checks in Defendant's name. The Debtor did not disclose this Gold Star Group, LLC Wells Fargo account in his bankruptcy schedules. See Docket # 95, Appendix "A" at pg. 11. While Debtor listed other Gold Star companies, he failed to list Gold Star Group, LLC. See Declaration of Michael Jason Lee, at Appendix 1 for a schedule of the payments made from Goldstar Group, LLC and Debtor's retention of control and direction of the funds.

c. On or about July 22, 2015, the Debtor issued a check to Defendant in the amount of \$13,000. See Ahuja Decl. at ¶9, Exhibit "8".

d. On or about September 1, 2015, the Debtor transferred \$9,000 to Defendant. See Ahuja Decl. at ¶9, Exhibit "9".

There is no evidence of consideration ever being paid to Debtor for the transfers made to Defendant. Debtor retained control over the funds he transferred to his mother who then subsequently transferred said funds to Goldstar Group, LLC – an entity she was the sole signatory on. Thereafter, Debtor directed payment of those funds and paid his own personal expenditures out of the Gold Star Group, LLC account. Debtor used the funds to pay his lawyer, to pay for his personal assistant, to pay for his older son's music career expenses, to pay for his younger son's car racing aspirations, to pay himself, to pay his wife, to withdraw cash, to pay for his older son's business ventures. See Declaration of Michael Jason Lee at ¶5, Appendix 1

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and Exs. 1-3. By keeping the funds in the name of his mother and Gold Star Group, LLC, Debtor was able to hide the money and hinder his creditors from collecting or freezing the transferred monies.

3. Legal Standards

FRCP 55 permits a court to enter default judgment upon a party's application. A court may grant or deny a motion for default judgment at its discretion. See *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988) (citing *Haw. Carpenters' Tr. Funds v. Stone*, 794 F.2d 508, 511–12 (9th Cir. 1986); *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986)). The Ninth Circuit has set out seven factors, known as the Eitel factors, that a court may consider when exercising its discretion as to whether or not to grant default judgment: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel*, 782 F.2d at 1471–72.

When weighing these factors, the well-pleaded factual allegations of the complaint are taken as true, except for those allegations relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987); see also Fed. R. Civ. P. 8(b)(6). To prove damages, a plaintiff may submit declarations, or the Court may hold an evidentiary hearing. See *Affinity Grp., Inc. v. Balsar Wealth Mgmt., LLC*, No. 05CV1555 WQH (LSP), 2007 WL 1111239, at *1 (S.D. Cal. Apr. 10, 2007); see also *Taylor Made Golf Co. v. Carsten Sports*, 175 F.R.D. 658, 661 (S.D. Cal. 1997) ("In assessing damages, the court must review facts of record, requesting more information if necessary, to establish the amount to which plaintiff is lawfully entitled upon judgment by default.").

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4. The *Eitel* Factors

The *Eitel* factors are analyzed as follows:

The first factor, prejudice to plaintiff, as Trustee argues, weighs in favor of entering default judgment. Plaintiff appears to have stated a valid claim against Defendant for a voidable transaction and Defendant has failed to appear or participate in this action. Plaintiff has therefore suffered and continues to suffer injury. Without a default judgment, Plaintiff lacks any other recourse to recover damages. This constitutes prejudice that favors default judgment. See *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (noting that "[i]f Plaintiffs' motion for default judgment is not granted, Plaintiffs will likely be without other recourse for recovery" and will suffer prejudice).

Regarding factor 2, the claim merits and sufficiency of the complaint, as noted by Trustee, a default concedes the truth of the allegations in the complaint, except those relating to damages. *TeleVideo*, 826 F.2d at 917–18 (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)); *Taylor Made*, 175 F.R.D. at 661 (noting that "[i]n assessing liability, the complaint's allegations are taken as true" because "a defendant's default functions as an admission of the plaintiff's well-pleaded allegations of fact"). Amongst other allegations, Plaintiff brings a claim for a voidable transaction pursuant to Cal. Civ. Code §3439.04. A trustee may bring a state law claim for fraudulent transfer that exists as to a creditor as of the date of the bankruptcy petition. *In re EPD Inv. Co., LLC*, 523 B.R. 680, 685 (B.A.P. 9th Cir. 2015) (Section 544(b)(1) authorizes a trustee to avoid "any transfer of an interest of the debtor in property...that is voidable under applicable law" – i.e., state law.). Here, the fraudulent transfer claims existed pre-petition, as the transfers pre-date the petition by several years. Cal. Civ. Code §3439.04 provides the following:

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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.

(b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:

(1) Whether the transfer or obligation was to an insider.

(2) Whether the debtor retained possession or control of the property transferred after the transfer.

(3) Whether the transfer or obligation was disclosed or concealed.

(4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(5) Whether the transfer was of substantially all the debtor's

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assets.

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(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Almost all of the *Eitel* factors all appear to be satisfied. "The UVTA, formerly known as the Uniform Fraudulent Transfer Act, 'permits defrauded creditors to reach property in the hands of a transferee.' 'A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim.'... The purpose of the voidable transactions statute is "'to prevent debtors from placing property which legitimately should be available for the satisfaction of demands of creditors beyond their reach..." *Lo v. Lee*, 24 Cal.App.5th 1065, 1071 (2018). "Whether a conveyance was made with fraudulent intent is a question of fact, and proof often consists of inferences from the circumstances surrounding the transfer." *Filip*, 129 Cal.App.4th at

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834, internal citations omitted.). "There is no minimum number of factors that must be present before the scales tip in favor of finding of actual intent to defraud. This list of factors is meant to provide guidance to the trial court, not compel a finding one way or the other." *Id.* Here, Trustee persuasively asserts that several of the badges of fraud codified in §3439.04 are implicated, including but not limited to:

- (1) Transfer was to an insider, namely his mother;
- (2) Debtor retained possession of the transferred funds and controlled them through another entity;
- (3) Debtor concealed the asset by not listing his interest in Gold Star, LLC in his schedules;
- (4) Debtor absconded with the funds by transferring the funds after Hybrid obtained a temporary restraining order preventing the transfer of funds;
- (5) Litigation was already initiated (with Hybrid) at the time he transferred the funds to his mother.

Several of the badges of fraud set forth in §3439.04 are implicated. As the motion is unopposed and the facts appear to be supported by the motion's accompanying exhibits and declarations, the court accepts these as alleged. The next Eitel factor is sum of money at stake. Under this factor, the court considers whether the damages sought are proportional to the alleged harm. *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 921 (N.D. Cal. 2010). Here, the damages sought mirror the amount fraudulently transferred to Defendant by Debtor. Here, Trustee asserts that the amount of assets transferred was \$707,100 in cash and seeks this amount in a

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monetary judgment. Thus, this amount is appropriate and is the amount prayed for in the First Amended Complaint against Defendant. Next, the court considers the possibility of a factual dispute. As Trustee asserts, the allegations must be taken as true because of the default, see *TeleVideo*, 826 F.2d at 917–18. Therefore, any purported factual dispute is settled as there is no indication that Defendant will defend against the action. Accordingly, this factor favors default.

The court is obliged to look at reason(s) for default under *Eitel*. If a defendant's default may have been the product of excusable neglect, this factor weighs against granting default judgment. *Eitel*, 782 F.2d at 1471–72. Here, there is no indication or evidence of excusable neglect. Thus, this factor weighs in favor of default judgment.

The final *Eitel* factor requires the court to consider the policy that favors judgment on the merits. As Trustee observes, it would seem that this factor would always weigh against granting such a motion, but here, there is no indication that a merit-based decision is practicable because Defendant has yet to answer Plaintiff's complaint or respond to this motion in any way despite being given timely notice and proper service. As Trustee argues, the policy of timely administration of justice outweighs the strong preference for a merit-based decision in this case.

5. Is There a Statute of Limitations Issue?

As to timing, Cal. Civ. Code §3439.09 provides:

"A cause of action with respect to a transfer or obligation under this chapter is extinguished unless action is brought pursuant to subdivision (a) of Section 3439.07 or levy made as provided in subdivision (b) or (c) of Section 3439.07:

(a) Under paragraph (1) of subdivision (a) of Section 3439.04, not later

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than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

(b) Under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05, not later than four years after the transfer was made or the obligation was incurred."

Trustee's allegations are uncontested. However, missing from Trustee's analysis is discussion of the amount of time that lapsed between the transfers and the complaint. The applicable statute allows a claim for fraudulent conveyance to be brought within 4 years of the transfer. Here, the transfers took place at various times in 2015, but the largest transfer, representing nearly 97% of the requested relief, occurred on January 20, 2015. Four years later would be January 20, 2019. However, the complaint initiating this adversary proceeding was not filed until March 14, 2019, which is outside the original statutory period. But, of course, the bankruptcy was filed March 15, 2017, before the statute had lapsed, so there is application of 11 U.S.C. §108(a), which provides for a two-year extension. This complaint would seem, then, to have been just under the wire.

6. Conclusion

Grant as prayed. Trustee will submit a form of order.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court’s website has been updated with this new information.

Party Information

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash
David B Shemano

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
Oussha Shlaimoun	Pro Se
Nico Aksel Leos Shlaimoun	Pro Se
Helen Shlaimoun	Pro Se
Go Gum, LLC, a Delaware limited	Pro Se

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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
Michael Jason Lee
Sunjina Kaur Anand Ahuja

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8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

Adv#: 8:19-01042 Laski v. Almada et al

#26.00 Application And Order For Appearance Of Anthony Almada To Enforce Judgment Of Debtor Examination
(con't from 4-15-20 per order entered 4/14/2020)
(re-scheduled from 7-23-20 at 11:00 a.m. per court order)

Docket 48

Tentative Ruling:

Tentative for 7/23/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

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

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CONT... Vitargo Global Sciences, Inc.

Chapter 11

GENr8, Inc.

Pro Se

Plaintiff(s):

Richard J Laski

Represented By
Ryan D O'Dea
M Douglas Flahaut

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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8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

- #27.00** Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay
(set by Order entered 3-18-20)
(cont'd from 6-25-20)
(re-scheduled from 7-23-20 at 11:00 a.m. to 3:00 p.m.)

Docket 113

***** VACATED *** REASON: THIS MATTER WILL HEARD AT 10:00
A.M. SEE MATTER #5.10**

Tentative Ruling:

Tentative for 6/25/20:

Following the hearing on the OSC re: Contempt on April 29, Foothill Financial and Trustee jointly lodged an order on April 30. The official order issued on May 11. Mr. Herman filed an untimely objection to the lodged order.

To accompany his objection to the lodged order, Mr. Herman attached his own proposed order, which bears little resemblance to the actual ruling on the OSC and several other orders issued by this court.

The most consequential rewrite Mr. Herman makes to his proposed order is where he states that per our abstention order, he is allowed to pursue in state court all claims that may belong solely to his wife with no limit on value. This is despite the many orders issued by this court where the specific claims the court abstained from are listed. Foothill's response catalogues the various orders and judgments with the court's very clear language articulating the narrow scope of its abstention.

Mr. Herman appears to have seized upon the most miniscule ambiguity to deliberately disregard the language and spirit of this court's orders in an attempt to reframe his dismissed claims as belonging solely to his wife, thereby allowing him to re-litigate them in state court. Mr. Herman may have already filed a version of his order with the state court. Foothill and Trustee

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are understandably dismayed by this latest attempt to hinder and delay.

In light of this most recent and fairly egregious transgression, Foothill requests that the court now impose monetary sanctions. Foothill suggests that Mr. Herman should pay the fees incurred by Foothill as a result of Mr. Herman's ongoing contempt, which Foothill estimates in its status report at \$7,500.

Mr. Herman has filed his own status report asserting that the contempt order is on appeal and there is nothing else to be adjudicated by this court at this time, all matters now being with the district court.

Mr. Herman is playing with fire. Rather than displaying even a modicum of compunction after being adjudged to be in contempt, Mr. Herman asserts in his objection that his contempt is now purged, and that it never truly existed in the first place. Mr. Herman, we should not forget, is also an attorney, and is presumed to be able to understand court orders and the consequences for disregarding them. Thus, a measured and modest monetary sanction is likely appropriate, with the promise of more severe sanctions to follow if Mr. Herman continues to misconduct himself.

The court requests an update on whether Mr. Herman actually lodged a bogus form of order with the state court. Impose monetary sanctions of \$2000 payable jointly to Foothill and Trustee.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

(a) Why he should not be held in contempt for

- i. his continuing efforts to exercise control over and interfere with the dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and
- ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.

(b) Why he should not be subjected to the following sanctions:

- i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and
- ii. Compensatory damages incurred by Foothill and the Trustee as a result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely

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CONT... **Richard Paul Herman**
responses.

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Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the Trustee has sought damages under 11 U.S.C. § 362(k), but rather this

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Chapter 7

proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted). Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2) affirming to the State Court that the only cause of action that the Hermans

**United States Bankruptcy Court
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2:00 PM

CONT...

Richard Paul Herman

Chapter 7

assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "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) Debtor's "claim 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."

2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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CONT... **Richard Paul Herman** Chapter 7

appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

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
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Thursday, July 23, 2020

Hearing Room 5B

2:00 PM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01041 Marshack v. West Coast Business Capital LLC et al

#28.00 Defendant's West Coast Business Capital, LLC's Motion To Dismiss 12(b)(1)(6) (cont'd from 7-02-20 per order approving stip. to cont. motion to dismiss entered 6-18-20) (re-scheduled from 7-23-20 at 11:00 a.m. per court order)

Docket 27

***** VACATED *** REASON: CONTINUED TO 8-13-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT WEST COAST BUSINESS CAPITAL, LLC TO CONTINUE
HEARING ON MOTION TO DISMISS ENTERED 7-02-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Represented By
Michael W Davis

Vernon Capital Group LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

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2:00 PM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#29.00 Defendant EBF Partners, LLC's Motion to Dismiss Complaint For Failure To State A Claim For Relief And For More Definite Statement
(cont'd from 7-02-20 per order approving stip. to cont. mtn to dismiss entered 6-18-20)
(re-scheduled from 7-23-20 at 11:00 a.m. per court order)

Docket 79

***** VACATED *** REASON: CONTINUED TO 9-03-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT EBF PARTNERS, LLC TO CONTINUE HEARING ON
MOTION TO DISMISS ENTERED 7-20-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

**United States Bankruptcy Court
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CONT... i.i. Fuels, Inc. Chapter 7

Yes Funding Corp., a New York	Pro Se
Atlas Acquisitions, LLC, a New	Pro Se
Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe
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**United States Bankruptcy Court
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Thursday, July 23, 2020

Hearing Room 5B

2:00 PM

8:11-22626 Son Ba Mai

Chapter 7

Adv#: 8:19-01019 Daniel Cham MD v. Mai

#30.00 Defendant's Motion For Summary Judgment

Docket 63

Tentative Ruling:

Tentative for 7/23/20:

Per Movant's Notice of Rescheduled Hearing filed 6/16, the hearing is rescheduled to August 13, 2020 at 2:00PM. Appearance is not required.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Son Ba Mai

Represented By
Christina M Chan
Christopher L Blank

Defendant(s):

Son Mai

Represented By
Christopher L Blank
Erwin Adler

**United States Bankruptcy Court
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2:00 PM

CONT... Son Ba Mai

Chapter 7

Plaintiff(s):

Daniel Cham MD

Represented By
Christopher L Blank

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, July 28, 2020

Hearing Room 5B

10:00 AM

8:16-13256 Ann Marie Rees

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 44

Tentative Ruling:

Tentative for 7/28/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Ann Marie Rees

Represented By
Barbara J Craig

Movant(s):

Wells Fargo Bank

Represented By
April Harriott

**United States Bankruptcy Court
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Tuesday, July 28, 2020

Hearing Room 5B

10:00 AM

CONT... Ann Marie Rees

Chapter 13

Matthew R. Clark III
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, July 28, 2020

Hearing Room 5B

10:00 AM

8:18-10808 Jack Dennis Mitchell and Kathleen Marie Mitchell

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-16-20)**

**PENNYMAC LOAN SERVICING LLC
Vs.
DEBTOR**

Docket 44

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY**

Tentative Ruling:

Tentative for 6/16/20:

Grant unless current or APO stipulation. Appearance optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jack Dennis Mitchell

Represented By
Nicholas M Wajda

Joint Debtor(s):

Kathleen Marie Mitchell

Represented By

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10:00 AM

**CONT... Jack Dennis Mitchell and Kathleen Marie Mitchell
Nicholas M Wajda**

Chapter 13

Movant(s):

PENNYMAC LOAN SERVICES,

Represented By
Robert P Zahradka

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 28, 2020

Hearing Room 5B

10:00 AM

8:20-11886 Angela M Sancho

Chapter 13

#3.00 Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay as the Court Deems Appropriate .

Docket 10

Tentative Ruling:

Tentative for 7/28/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court’s website has been updated with this new information.

Party Information

Debtor(s):

Angela M Sancho

Represented By
Paul Y Lee

Movant(s):

Angela M Sancho

Represented By
Paul Y Lee
Paul Y Lee
Paul Y Lee
Paul Y Lee

**United States Bankruptcy Court
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Tuesday, July 28, 2020

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10:00 AM

CONT... Angela M Sancho

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 28, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

#4.00 Motion by United States Trustee to Convert Case to Chapter 7 or Dismiss Pursuant to 11 U.S.C. Section 1112(b)
(cont'd from 5-27-20)

Docket 31

Tentative Ruling:

Tentative for 7/28/20:
Grant dismissal.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 5/27/20:

See #2. Debtor is coming to the end with this case. Catching up on missing MORS was the absolute requirement as without that there would be no more rope (and future lapses will not be tolerated). The debtor continues to assert the prospect of a turnaround but the hard facts are that we have not seen it yet and this is no longer a young case. As the UST argues, there is a substantial gap between proven income to date and what would be required on a monthly basis to service the mortgage, let alone anything else. We will continue about 60 days and in that time several things must happen: 1. a plan

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CONT... Carole Ann Meikle

Chapter 11

and disclosure statement must be on file; 2. that plan must be plausible and confirmable; 3. the disclosure statement must be accurate and complete, something approvable in the first pass (and not as a last minute bid to get more time); and 4. supporting evidence must be on file explaining how any of this actually works. Continued blaming of COVID-19 may be accurate but will not be availing, largely because this case was in trouble well before that became an issue. Continue approximately 60 days to coincide with #2.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:

The court will determine whether, based on timely MORs, there is enough regular income to support a plan. Failure to demonstrate this ability, or any further delinquency on filing of MORs, will likely result in granting the motion.

Continue for 60-75 days per Trustee's suggestion.

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

Movant(s):

United States Trustee (SA)

Represented By

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CONT...

Carole Ann Meikle

Michael J Hauser

Chapter 11

**United States Bankruptcy Court
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Tuesday, July 28, 2020

Hearing Room 5B

10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

**#5.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual
(cont'd from 5-27-20)**

Docket 1

Tentative Ruling:

Tentative for 7/28/20:
Grant dismissal.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/27/20:
See #2 and 3.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney –

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CONT... Carole Ann Meikle

Chapter 11

pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:
Continue to coincide with UST's motion.

Tentative for 1/8/20:
Continue to January 22, 2020 to coincide with dismissal/conversion motion.

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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10:00 AM

8:19-13089 Carole Ann Meikle

Chapter 11

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 5-27-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 51

Tentative Ruling:

Tentative for 7/28/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/27/20:

Continue for about 60 days. The debtor's principal defense is that there is equity and the property is necessary to a reorganization within the meaning of §362(d)(2). While it is true that debtor's burden is to prove that the property is necessary and that something is in prospect, it is movant's burden to prove

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10:00 AM

CONT... Carole Ann Meikle

Chapter 11

no equity, and both elements are required. That is a very close question on this record. There is clearly not enough equity to provide "adequate protection" within the meaning of §362(d)(1). Even if debtor's appraisal could be believed there might be, at best, only a razor thin slice above liens and costs of sale. So, the only solution is for debtor to confirm a plan and quickly. The court is willing to give a brief opportunity to do this, but if by the continued hearing there is not a plausible, confirmable plan on file, there will be no more time given. A word of caution: this does not mean some document that says "plan" on it, it means something that has been thought through and looks like it can actually be confirmed, and that will require supporting evidence. COVID-19 is a tragedy but in the end sympathy does not substitute for hard evidence, as that term does not appear in the statute.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Carole Ann Meikle

Represented By
James D. Hornbuckle

Movant(s):

U.S. Bank National Association, not

Represented By
Greg P Campbell

**United States Bankruptcy Court
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Tuesday, July 28, 2020

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

**#7.00 TRIAL RE: Adversary Motion of Bankruptcy Fraud and Objection to Discharge By Creditor 1) 41: Objection/Recovery 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 Separation Obligation
(set from p/t hrg held from 3-26-20)**

Docket 83

***** VACATED *** REASON: CONTINUED TO 10-19-20 AT 10:00 A.M.
PER ORDER GRANTING MOTION TO CONTINUE TRIAL PURSUANT
TO LOCAL RULE 9013-1(m) ENTERED 6-30-20**

Tentative Ruling:

Tentative for 3/26/20:
Schedule trial date in approximately 60-90 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 11/14/19:
If no appearance, issue OSC re: dismissal for lack of prosecution.

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Hearing Room 5B

10:00 AM

CONT... Stacey Lynn Schmidt

Chapter 7

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?

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.

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CONT... Stacey Lynn Schmidt

Chapter 7

Tentative for 11/2/17:
See #4. What is happening on February 1, 2018 at 11:00 am?

Tentative for 10/12/17:
Status conference continued to November 2, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, July 28, 2020

Hearing Room 5B

11:00 AM

8:11-20435 Jeffrey G Wade and Sandra Lind Wade

Chapter 7

#8.00 Motion To Discharge Tax Debt As Non-Priority Unsecured Claims

Docket 38

Tentative Ruling:

Tentative for 7/28/20:

This is Debtors, Jeffrey and Sandra Wade's ("Debtors") motion to discharge tax debt as non-priority unsecured claims. Debtors request that the court enter an order discharging the tax debt listed in the amended schedule E/F in the amount of \$43,768.91 pursuant to 11 U.S.C. §727(b). The motion is opposed by creditor, Franchise Tax Board ("FTB"). Debtors failed to include 2006 and 2007 FTB tax debt in their 2011 bankruptcy, mistakenly believing that the state tax debt would be wiped out when the federal tax debt was discharged. Debtors assert that this mistaken assumption was due in part to bad advice given to them by their CPA. The case was re-opened, and Debtors now request that their tax debt from 2006 and 2007 be discharged pursuant to 11 U.S.C. 727(b), which states in relevant part:

"a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title."

Debtors request that the court enter an order discharging the tax debt in the amount of \$43,768.91. Debtors assert that the taxes are income taxes and eligible for discharge, the debt is over three years old, the Franchise Tax Board has assessed the tax debt and this assessment was done at least 240 days before the petition was filed, and there are no known tax liens

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Tuesday, July 28, 2020

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11:00 AM

CONT... Jeffrey G Wade and Sandra Lind Wade Chapter 7

associated with this debt. Debtors also assert that they have not committed fraud or any willful evasion, and that there are no other avenues available to Debtors.

First, the court doubts that this could proceed via motion in any event. Dischargeability issues are determined by adversary proceedings. See FRBP 7001(6). Second, the governing statute is §523(a)(1)(B) and (C). These sections provide: 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—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required—

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

The principal dispute seems to be whether the tax claims in question are priority debts of the sort described in Section 507(a)(2) or (a)(8), which are then within the description of non-dischargeable debts. Debtors argue that they are. By contrast, FTB asserts that its claims are entitled to priority status pursuant to 11 U.S.C. 507(a)(8)(A), which provides:

(a) The following expenses and claims have priority in the following

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CONT...

Jeffrey G Wade and Sandra Lind Wade
order:

Chapter 7

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days

Some of Debtors assertions are at odds with those of the FTB. For example, FTB cites *In re King*, 961 F.2d 1423, 1424 (9th Cir. 1992) where the court noted that "[t]he date on which the taxes were assessed rather than the due date of the return determines priority under the 240-day rule." FTB also asserts that to assess personal income tax, the FTB must send a taxpayer a proposed deficiency assessment setting forth the reasons for the proposed deficiency and the corresponding computations. Cal. Rev. & Tax. Code § 19034(a). Further, if the taxpayer wishes to protest the proposed deficiency, the taxpayer must file a written protest within 60 days of each notice of proposed deficiency. Cal. Rev. & Tax. Code § 19041(a). FTB asserts that it issued a Notice of Proposed Assessment for the 2006 tax year on March 8, 2011, which became final on May 9, 2011 after the expiration of the 60-day period. The FTB also issued a Notice of Proposed Assessment for the 2007

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CONT... Jeffrey G Wade and Sandra Lind Wade Chapter 7

period on December 28, 2010, which became final on February 28, 2011 after the expiration of the 60-day period. Debtors filed their petition on July 26, 2011. Thus, the FTB calculates that it assessed Debtors' 2006 liability only 78 days before the filing of their voluntary petition and assessed Debtors' 2007 liability only 148 days before the filing of their voluntary petition. Since both the 2006 and 2007 tax liabilities were assessed within 240 days of the filing of Debtors' voluntary petition, FTB concludes that their taxes are entitled to priority status and cannot be discharged in the bankruptcy.

Debtors have not filed a Reply and so cannot account for the discrepancies identified by the FTB. It is perhaps notable that Debtors filed a very similar motion roughly one year ago requesting that their IRS debt in the amount of \$363,680.03 be discharged following the reopening of their bankruptcy case. The IRS did not file an opposition and the motion was granted. Adding to the confusion is that Debtors assert that the FTB confirmed with Debtor that the 2006 and 2007 tax debts were dischargeable, but it is the FTB that opposes this motion. Debtors' motion is light on analysis and exhibits that confirm or support their asserted facts. Thus, as it is Debtors' motion, they must bear the burden of demonstrating their entitlement to the relief they seek, which they have not done (even if the court could entertain this request outside an adversary proceeding).

Deny

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Please be advised that CourtCall has announced reduced fees for attorneys

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CONT... Jeffrey G Wade and Sandra Lind Wade Chapter 7
to use CourtCall and free access for parties who do not have an attorney –
pro se or self-represented litigants through September 30, 2020. The Court's
website has been updated with this new information.

Party Information

Debtor(s):

Jeffrey G Wade

Represented By
Mitchell reed Sussman
Brian C Andrews

Joint Debtor(s):

Sandra Lind Wade

Represented By
Mitchell reed Sussman
Brian C Andrews

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 28, 2020

Hearing Room 5B

11:00 AM

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

Chapter 13

**#9.00 Motion For Authority To Refinance Real Property Under LBR 3015-1 (P) Ch 13
(set from order entered on 7-14-20 see doc #83)**

Docket 80

Tentative Ruling:

Tentative for 7/28/20:

It would appear that there is nothing in the motion that seeks to rearrange priority of liens, so even if Golden Star has a junior lien there is no attempt to prime liens. If priming is being attempted that must be clarified by debtor. Further, as clarified in the debtors' response, proceeds of the line of credit may be used to pay Golden Star as well as all other creditors and presumably the Trustee will take care to see to that occurs before any proceeds are given back to debtor.

Grant.

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Party Information

Debtor(s):

Edward Michael Worrel

Represented By
Michael Jones
Sara Tidd

**United States Bankruptcy Court
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11:00 AM

CONT... Edward Michael Worrel and Eunice Santos Worrel

Chapter 13

Joint Debtor(s):

Eunice Santos Worrel

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 29, 2020

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

**#1.00 TRIAL RE: Adversary Motion of Bankruptcy Fraud and Objection to Discharge By Creditor 1) 41: Objection/Recovery 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 Separation Obligation
(set as s/c held 8-2-18)
(set from p/t hrg held 3-26-20)**

Docket 83

***** VACATED *** REASON: CONTINUED TO 10-20-20 AT 10:00 A.M.
PER ORDER GRANTING MOTION TO CONTINUE TRIAL PURSUANT
TO LOCAL RULE 9013-1 (m) ENTERED 6-30-20**

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
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Thursday, July 30, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

- #1.00** STATUS CONFERENCE RE: Complaint Of Creditor For Denial Of Discharge (11 U.S.C. Section 727) And To Determine Nondischargeability Of Debt (11 U.S.C. Section 523(a))
(another summons issued on 1/6/2020)
(cont'd from 6-25-20 per hearing held on 6-23-20 mtn to vacate previous order)

Docket 1

Tentative Ruling:

Tentative for 7/30/20:

Discovery cutoff December 31, 2020. Last date to file pretrial motions January 22, 2021. Pretrial conference February 11, 2021.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 3/26/20:

Status conference continued to June 25, 2020 at 10:00AM for completion of arbitration.

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10:00 AM

CONT... Deborah Jean Hughes Chapter 7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Plaintiff(s):

Adam Seligman

Represented By
Amy Johnsgard

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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Thursday, July 30, 2020

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10:00 AM

8:20-10079 James G Andritch, II

Chapter 7

Adv#: 8:20-01021 Andritch, II v. Internal Revenue Service

#2.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Tax Liability (rescheduled from 5-28-2020 at 10:00 a.m. per court) (cont'd from 5-27-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING STIPULATION BETWEEN DEFENDANT UNITED STATES AND PLAINTIFF JAMES G. ANDRITCH, II TO RESOLVE THE COMPLAINT TO DETERMINE DISCHARGEABILITY OF TAX LIABILITY ENTERED 7-29-20**

Tentative Ruling:

Tentative for 5/27/20:

Status? See IRS brief regarding proper service issue. Continue for issuance of alias summons?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

James G Andritch II

Represented By

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 30, 2020

Hearing Room 5B

10:00 AM

CONT... James G Andritch, II

Chapter 7

Bruce A Boice

Defendant(s):

Internal Revenue Service

Pro Se

Plaintiff(s):

James G Andritch II

Represented By
Bruce A Boice

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, July 30, 2020

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.

**#3.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer - (HOLDING DATE)
(set from s/c held on 5-24-18)
(con't from 8-1-19)
(con't from 7-16-20 per court's own mtn)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER ON
STIPULATION BETWEEN PLAINTIFF AND DEFENDANT TO DISMISS
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 7-20-20**

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

**United States Bankruptcy Court
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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Jeffrey S Kwong
Daniel J Weintraub

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
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Thursday, July 30, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#4.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Based On Fraud And Objecting To Discharge Of Debtors (cont'd from 5-27-20 per order re: stip. to cont. pre-trial entered 5-22-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/01/20 AT 10:00 A.M.
PER ORDER RE: STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE HEARING ENTERED 6-08-20**

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.

Tentative for 6/6/19:
See # 23 & 24 - Motions to Dismiss

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

**United States Bankruptcy Court
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Thursday, July 30, 2020

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

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

**United States Bankruptcy Court
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Santa Ana
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Thursday, July 30, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#5.00 Motion For Default Judgment Against Arch Capital Advisors, Inc.

Docket 57

Tentative Ruling:

Tentative for 7/30/20:
Grant. Form of judgment to be submitted.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By

**United States Bankruptcy Court
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Thursday, July 30, 2020

Hearing Room 5B

11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

M Douglas Flahaut
Annie Y Stoops

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

Yes Funding Corp., a New York

Pro Se

Atlas Acquisitions, LLC, a New

Pro Se

Capital Stack Fund II LLC, a

Pro Se

New Era Lending, a California

Pro Se

Arch Capital Advisors, Inc., a

Pro Se

CoreFund Capital, LLC, a Texas

Represented By
Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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Thursday, July 30, 2020

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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#6.00 Motion For Default Judgment Against Capital Stack Fund II LLC

Docket 59

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF CAPITAL
STACK FUND II LLC ONLY FILED 7-13-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut
Annie Y Stoops

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

Yes Funding Corp., a New York

Pro Se

Atlas Acquisitions, LLC, a New

Pro Se

Capital Stack Fund II LLC, a

Pro Se

**United States Bankruptcy Court
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11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

New Era Lending, a California

Pro Se

Arch Capital Advisors, Inc., a

Pro Se

CoreFund Capital, LLC, a Texas

Represented By
Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#7.00 Motion For Default Judgment Against New Era Lending, a California Corporation

Docket 60

Tentative Ruling:

Tentative for 7/30/20:
Grant. Form of judgment to be submitted.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

NEXGEN Capital Limited Liability	Pro Se
Queen Funding LLC, a New Jersey	Pro Se
Yes Funding Corp., a New York	Pro Se
Atlas Acquisitions, LLC, a New	Pro Se

**United States Bankruptcy Court
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CONT... i.i. Fuels, Inc. Chapter 7

Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall
CapCall LLC, a New York Limited	Represented By Lei Lei Wang Ekvall
EBF Partners LLC, a Delaware	Represented By Michael W Davis
Forward Financing LLC, a Delaware	Represented By M Douglas Flahaut Annie Y Stoops
Mantis Funding LLC, a Delaware	Represented By Howard Steinberg

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe
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**United States Bankruptcy Court
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Thursday, July 30, 2020

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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#8.00 Motion For Default Judgment Against Nexgen Capital Limited Liability Company

Docket 62

Tentative Ruling:

Tentative for 7/30/20:
Grant. Form of judgment to be submitted.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

NEXGEN Capital Limited Liability	Pro Se
Queen Funding LLC, a New Jersey	Pro Se
Yes Funding Corp., a New York	Pro Se
Atlas Acquisitions, LLC, a New	Pro Se

**United States Bankruptcy Court
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11:00 AM

CONT... i.i. Fuels, Inc. Chapter 7

Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall
CapCall LLC, a New York Limited	Represented By Lei Lei Wang Ekvall
EBF Partners LLC, a Delaware	Represented By Michael W Davis
Forward Financing LLC, a Delaware	Represented By M Douglas Flahaut Annie Y Stoops
Mantis Funding LLC, a Delaware	Represented By Howard Steinberg

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe
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**United States Bankruptcy Court
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Santa Ana
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Thursday, July 30, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#9.00 Motion for Default Judgment Against Queen Funding LLC

Docket 64

Tentative Ruling:

Tentative for 7/30/20:
Grant. Form of judgment to be submitted.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By

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Chapter 7

M Douglas Flahaut
Annie Y Stoops

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

Yes Funding Corp., a New York

Pro Se

Atlas Acquisitions, LLC, a New

Pro Se

Capital Stack Fund II LLC, a

Pro Se

New Era Lending, a California

Pro Se

Arch Capital Advisors, Inc., a

Pro Se

CoreFund Capital, LLC, a Texas

Represented By
Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

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Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#10.00 Motion for Default Judgment Against Yes Funding Corp., A New York Corporation

Docket 66

Tentative Ruling:

Tentative for 7/30/20:
Grant. Form of judgment to be submitted.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

NEXGEN Capital Limited Liability	Pro Se
Queen Funding LLC, a New Jersey	Pro Se
Yes Funding Corp., a New York	Pro Se
Atlas Acquisitions, LLC, a New	Pro Se

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Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall
CapCall LLC, a New York Limited	Represented By Lei Lei Wang Ekvall
EBF Partners LLC, a Delaware	Represented By Michael W Davis
Forward Financing LLC, a Delaware	Represented By M Douglas Flahaut Annie Y Stoops
Mantis Funding LLC, a Delaware	Represented By Howard Steinberg

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe
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Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#11.00 Motion for Default Judgment Against Capital Stack Fund II, LLC

Docket 69

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF CAPITAL
STACK FUND II LLC ONLY FILED 7-13-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

NEXGEN Capital Limited Liability Pro Se

Queen Funding LLC, a New Jersey Pro Se

Yes Funding Corp., a New York Pro Se

Atlas Acquisitions, LLC, a New Pro Se

Capital Stack Fund II LLC, a Pro Se

New Era Lending, a California Pro Se

Arch Capital Advisors, Inc., a Pro Se

CoreFund Capital, LLC, a Texas Represented By
Lei Lei Wang Ekvall

CapCall LLC, a New York Limited Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware Represented By
Michael W Davis

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Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut
Annie Y Stoops

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Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

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8:19-12052 Deborah Jean Hughes

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Adv#: 8:19-01228 Marshack v. Hughes et al

- #12.00 STATUS CONFERENCE RE: Complaint For:**
- I. Denial Of Discharge Pursuant To 11 U.S.C. Sec. 727(a)(2-7);
 - II. Turnover Of Real Property Pursuant To 11 U.S.C. Section 542;
 - III. Turnover Of Funds Pursuant To 11 U.S.C. Sec. 542 & 543;
 - IV. Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. Sec. 547;
 - V. Avoidance Of A Preferential Transfer Pursuan To 11 U.S.C. Sec. 548;
 - VI. Avoidance Of A Post-Petition Transfer Pursuant To 11 U.S.C. Sec. 549
- (rescheduled from 6-4-2020 at 10:00 a.m. per court)
(cont'd from 7-09-20 per order on stip. to cont. s/c entered 7-07-20)**

Docket 1

Tentative Ruling:

Tentative for 7/30/20:
See #12.1

Tentative for 6/3/20:
Continue per stipulation (not yet received).

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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Why no status report? The status conference has been continued by stipulation to June 4, 2020 at 10:00 a.m. as to Timothy Hughes, Jason Hughes, and Betty McCarthy. It remains on calendar to address any concerns of the non-signatory and then will be continued to June 4, 2020 at 10:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By

Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Pro Se

Jason Paul Hughes

Pro Se

Betty McCarthy

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By

Anerio V Altman

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Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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Adv#: 8:19-01228 Marshack v. Hughes et al

#12.10 Motion To Dismiss Complaint For Failure To State A Claim Upon Which Relief Can Be Granted

Docket 27

Tentative Ruling:

Tentative for 7/30/20:

This is Defendants Jason Paul Hughes ("Jason Hughes"), in his individual capacity and as trustee for the JPH Living Trust ("JPH Trust"), and Timothy M. Hughes's ("Tim Hughes" and collectively "Defendants") motion to dismiss the adversary proceeding as to them pursuant to Fed. R. Civ. P. 12(b) (6). This motion is somewhat unusual in that it seeks to dismiss claims against only certain named defendants. Other defendants in this adversary proceeding, but not parties to this motion, include debtor, Deborah Jean Hughes ("Debtor"), and Debtor's mother, Betty McCarthy in her individual capacity and as trustee for the Betty Lou McCarthy Living Trust. The motion is opposed by the chapter 7 trustee, Richard Marshack ("Trustee").

1. Basic Background

The events as related by Trustee in his complaint are relatively straightforward and are largely uncontested; however, the intent behind certain acts is highly contested. Prior to the filing of her bankruptcy petition on May 28th, 2019, the Debtor was a married woman involved in a business with her family known as "Cuppa Juice Cold Pressed Juicery" which sold a variety of plant-based juice drinks and food products. This business had two locations: a store in Orange County and another in San Diego County. The business was incorporated in June 2014 and operated from on or around

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mid-2015 until early 2019. Shortly after filing her bankruptcy petition on May 28, 2019, the business closed.

The Debtor's interest in her business was an asset of her community as that is defined under the California Family Code. Ms. Hughes operated her business with the knowledge and consent of her husband Tim Hughes. Tim Hughes would sometimes assist the Debtor in her business. Her son Timothy Hughes (not currently a party to these proceedings) owned the business with her. The business was a community property asset used to generate community property income, which was used to pay community property debts. Business obligations she incurred were generated and intended to pay "necessities" and "necessaries" of life. California Family Code 910 et seq.

Beginning in early 2018, Ms. Hughes would suffer various legal problems. On January 26th, 2018, Ms. Hughes would be sued by future creditor Adam Seligman concerning a sale of certain corporate interests. This case was filed in the California Superior Court San Diego Division. In that matter, the Debtor brought a Motion to Compel Arbitration which was granted by the California Court resulting in the dismissal of the State Court proceeding. This dispute then proceeded in arbitration in the first part of 2019. No final judgment was issued by the arbitrator and the matter was ultimately stayed by the bankruptcy filing. Contemporaneously with these events, in 2019, she would then be brought into two other collection proceedings. By at least early 2019, the Debtor's debts would exceed her assets and she would be insolvent. With these creditors at the door, in 2019 the Debtor (as alleged by the Trustee) began taking steps in anticipation of filing bankruptcy.

On March 4, 2018, the Debtor drafted a document with her mother, Ms. McCarthy, to purchase a proposed percentage of her mother's house located at 4192 Shorebreak Drive, Huntington Beach, CA 92692 ("Shorebreak"). Pursuant to the terms of that agreement, Ms. Hughes purchased the following:

"It is the intent of both parties to allow Debbie Hughes to buy a

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percentage of the above described property. Said percentage will be based on the value of the home at the time of purchase divided by the total investment of Debbie Hughes. The purchase/percentage may not exceed 15% of the value of the home."

The Trustee alleges, on information and belief, that Shorebreak, is and was, worth approximately \$1,600,000 at the time this contract was executed. On April 28, 2019, Tim Hughes would file paperwork initiating a dissolution of his marriage to the Debtor. The Debtor would file her own dissolution petition on May 31, 2019. In violation of the automatic stay, and for reasons that are not clear, in July 2019, Tim Hughes and Deborah Hughes would then divide up and, in Trustee's words, abscond with their interests in the former community property. Ms. Hughes provided a document to the Trustee representing this property division agreement.

Prior to filing her bankruptcy petition, the Debtor owned real property located at 22571 Charwood Circle, Lake Forest, CA 92630 ("Charwood"). This was her residence and it was owned jointly by the Debtor and her husband Tim Hughes, presumably as community property. The Trustee alleges on information and belief that the value of the property was approximately \$700,000 as of May 2019; whether this value is net of liens is not stated.

As noted, Debtor filed her chapter 7 petition on May 28, 2019. A 341(a) hearing was initially scheduled for July 19, 2019. Debtor testified that she contracted with her son Jason Hughes to purchase her interest in Charwood and pay those proceeds to her mother, Betty McCarthy, in order to fund the purchase described in the March 4th, 2018 agreement. Records provided by the Debtor demonstrated that on May 21, 2019 she quitclaimed her interest in Charwood to Jason Hughes.

The Trustee alleges that the Debtor received funds for her transfer of Charwood (from Jason?) after she filed her bankruptcy petition on May 28th,

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2019. The Debtor provided the Trustee with a check dated "May 22nd, 2019" in favor of Betty McCarthy in the amount of \$130,000. However, the endorsement of the check by Betty McCarthy's bank demonstrates that it was honored on July 13th, 2019, well after the petition (and apparently in violation of the stay). Further, the Debtor demonstrated that she opened a post-petition bank account in June 2019 into which approximately \$132,307 was deposited. Therefore, the Trustee alleges that approximately \$130,000 was received by the Debtor post-petition and conveyed to Betty McCarthy in July 2019. Trustee asserts that these assets belonged to the estate as of May 28th, 2019, the date the petition was filed. Debtor would provide a Grant Deed to the Trustee, executed on July 25th, 2019, which purported to transfer 12% interest in Shorebreak drive to Debtor. As of the filing of the complaint in December of 2019, this document was not recorded nor this transfer perfected. On or around August 25th, 2019, Tim Hughes would transfer his interest in Charwood to Jason Hughes on behalf of JPH Trust by quitclaim deed. The Trustee alleges that either Tim Hughes received funds for this transfer or transferred this interest for no consideration. On or around November 7th, 2019, Jason Hughes would transfer his interest in Charwood to the JPH Trust.

Debtor would appear at several 341(a) hearings and make representations to the Trustee on the record. Of note, through her petition, and by documents provided to the Trustee, she allegedly testified as follows:

- (1) She testified to ownership of a Bank of America Account with her mother. She refused to provide full unredacted statements of this account to the Trustee upon request although she had unfettered access to acquire and provide these statements to the Trustee. Specifically, she provided the cover page of each account, and a formal declaration refusing to cooperate with the Trustee.
- (2) She testified that she conveyed the \$130,000 to her mother who

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then began quickly utilizing these funds for improvements to the Shorebreak property.

(3) She represented in testimony that the purchase of the Shorebreak property from her mother was an attempt to acquire an interest in a new residence. The Trustee alleges that the Debtor's representation on this point was fraudulent in nature and was an attempt to dissipate her assets and put them out of the reach of her creditors. No such interest was perfected prior to filing.

(4) She testified that she owned the assets of her business, and then proceeded to contract with her mother to sell off those same assets to acquire a loan to address some prepetition business debts.

5) She testified that Jason Hughes received approximately \$24,000 out of a lien placed against Charwood, or from other sources derived from the Debtor's assets.

2. 12(b)(6) 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

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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*, _ U.S._, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.* Threadbare recitals of elements supported by conclusory statements is not sufficient. *Id.* In determining a motion to dismiss, the court can consider: (1) the complaint and answer; (2) any documents attached or mentioned in the pleadings; (3) documents not attached but "integral" to the claims; and (4) matters subject to judicial notice. *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2nd Cir. 2011); *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010).

3. The Motion Deals Only With some Claims Against Some Defendants

The complaint contains a total of 13 claims for relief, but less than half of them, beginning with the seventh cause of action appear to implicate Defendants.

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Accordingly, this memorandum deals only with those concerning the movants.

**a. Seventh Claim for relief– Turnover of Property Pursuant to 11
U.S.C. §§542 and 543**

The seventh cause of action is for turnover of property pursuant to 11 U.S.C. §§542 and 543. 11 U.S.C. §542, in relevant part, provides that "An entity, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate."

Trustee alleges that Jason Hughes in his individual capacity, and as Trustee of the JPH Trust, possesses the Charwood property. The Charwood property is a parcel of real property that Trustee alleges Debtor transferred out of her name within 1 year prior to filing to an insider, namely her son and the JPH Trust. If the transfer is avoided by the Trustee, Jason Hughes should clearly turn the Charwood property over to the Estate. But it is not clear to the court that he should not do so anyway as Charwood appears to be community property asset and thus estate property, although this, in turn, may require avoidance of the attempted post-petition distribution agreement between debtor and Tim Hughes. Tim Hughes is alleged to possess proceeds from the liquidation of the Charwood Property. This is further complicated because apparently Jason quitclaimed Charwood back to Tim Hughes post-petition. To the extent the transfer of the Charwood property to Jason Hughes is not avoided, and to the extent the transfer of the proceeds of liquidation to Tim Hughes is avoided, Trustee asserts that the proceeds distributed to Tim Hughes from the liquidation of the Charwood property should be turned over to the Estate.

As noted by Defendants, this cause of action, or parts thereof, is dependent on avoidance and recovery under the other causes of action. Substantively, Defendants argue that there are simply no facts pled in the

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complaint that would tend to show that Jason Hughes is in possession of \$24,000 of estate money. On the contrary, Defendants argue that Jason Hughes is not holding any estate money, as the \$139,000 he paid for the Debtor's interest in Charwood was paid to the Debtor as acknowledged in the Complaint. See [Complaint 5:11-12; 18:7-6]. In the Opposition, Trustee acknowledges that Jason Hughes is not in possession of the \$24,000. Defendants also argue that this cause of action depends on findings the court has not yet made, making it premature as Tim Hughes occupies and owns half of the property. The court would add that contingent claims are difficult to assess for plausibility because the court is not making findings of fact at this point. Thus, this cause of action appears to be insufficiently supported by factual allegations and, therefore, too speculative at this time. Of course, if and when the court makes findings on the other causes of action upon which this cause of action depends, the complaint can be amended.

In sum, this claim for relief is muddled, and probably does not contain enough facts as against Jason regarding turnover of proceeds. As to other defendants and theories of relief, it is left unclear but it could do with a restatement and clarification.

**b. The Ninth Claim for Relief- Avoidance of Preferential(?)
Transfer Pursuant To 11 U.S.C. §548**

The court assumes that "Preferential" as appears in the caption is a mistake inasmuch as the substance of the alleged claim for relief sounds in fraudulent conveyance. This should be corrected.

11 U.S.C. § 548 provides in relevant part:

(a) (1) 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

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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—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(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;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

Trustee in his complaint alleges that Debtor engaged in all transfers complained of voluntarily and with the intent to defraud her creditors. Such transfers were made to insiders and the transfer of Charwood was for insufficient value considering what she received in exchange. To the extent

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she did receive \$139,000 pre-petition, she traded it in exchange for \$300,000 in alleged equity in Charwood, which was insufficient. Trustee also asserts that her divestiture from Charwood rendered Debtor insolvent. Defendants again assert that this cause of action is insufficiently pled. To begin with, the cause of action is styled as one to avoid preferential transfers, but the section cited covers fraudulent transfers. Defendants argue that the proper lens to view reasonably equivalent value is from the perspective of creditors, not from the debtor. Defendants also argue that if the transfers are sought to be avoided as intentionally fraudulent transfers, then the complaint must comply with the heightened pleading standards under Rule 9(b).

The court is not sure such pleading standards have been met. Trustee vaguely asserts that the transfers were the main parts of a larger scheme to put assets out of reach of creditors. What is left is mostly suggestion and innuendo and, not specific. As this claim appears to fall short of the heightened pleading standards in Rule 9(b), the claim for intentional fraudulent transfer should be dismissed with leave to amend. It could be argued that a claim for a constructively fraudulent transfer survives even if intentional fraud is not adequately pled, which it may not be. In terms of reasonably equivalent value, Trustee asserts that Debtor only received \$139,000 in exchange for her portion of Charwood, which should hypothetically be around \$300,000 (if one also accepts that only half and not the whole of equity in community assets is to be considered). This, Trustee argues, cannot represent reasonably equivalent value and Trustee is likely correct, at least for Rule 12 purposes since this is in any case a factual question. Defendants argue that the complaint does not contain adequate facts to conclude that the transfer was not for reasonably equivalent value, especially when viewed from the perspective of creditors. Defendants argue that the complaint does not consider what creditors would likely take from a hypothetical sale of Debtor's interest once costs, liens, and the like are included, to say nothing of what would result if Debtor and/or her husband elected a \$175,000 homestead exemption (and that exemption were sustained). Defendants conclude that the \$139,000 may very well be more

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than reasonably equivalent value for the transfer. These arguments are not supported by any authority. Although the question of value must be taken from the viewpoint of creditors (as held in Defendant's cited authorities), it is a long way further to argue that hypothetical homestead exemptions must also be factored in at the threshold of determining what reasonable equivalence is. Homesteads should be evaluated when and if they are asserted, not as hypotheticals pertaining to prepetition transfers. To do otherwise is to open a world of mischief. Further, the court does not read the *Iqbal* and *Twombly* standard to require such guesswork based on hypotheticals. Rather, viewing the assertions in the complaint in the light most favorable to Trustee as the nonmoving party, Trustee may well have a claim for a constructively fraudulent transfer, and might also have one for intentionally fraudulent conveyance if more explicit allegations are offered.

**c. Tenth Claim for Relief -Liability for a Preferential (Fraudulent)
Transfer pursuant to 11 U.S.C. §550**

This claim is dependent on the immediately preceding causes of action. But it is very common to allege these as conditional theories for relief in the same action since nothing is gained by making them into two adversary proceedings since once (or if) the transaction is avoided as a fraudulent conveyance, liability of the transferee should follow automatically as day follows night under §550.

**d. Eleventh Claim for Relief- Avoidance of Post-Petition Transfers
Pursuant to 11 U.S.C. §549**

11 U.S.C. §549 provides in relevant part:

(a) Except as provided in subsection (b) or (c) of this section, the

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trustee may avoid a transfer of property of the estate—

- (1) that occurs after the commencement of the case; and
- (2) (A) that is authorized only under section 303(f) or 542(c) of this title;
or
(B) that is not authorized under this title or by the court.

Trustee in his complaint alleges that to the extent any of the transfers are proven to be post-petition transfers of estate property, Trustee asks to avoid such transfers. This claim for relief is unclear as to Defendants. As Defendants argue, if this cause of action relates to Tim Hughes' transfer of his interest in Charwood to Jason Hughes after the commencement of the Debtor's case, the complaint does not state any facts to suggest that the estate retained an interest without the Debtor being on title. It might be that the Trustee is alleging that as of the transfer to Jason, Tim Hughes' interest was still a community property interest as the attempted division of community property between spouses was ineffectual. In any case, Defendants argue that this cause of action, to the extent it concerns Tim and Jason Hughes, has been rendered moot by virtue of the re-transfer back to Tim Hughes on January 22, 2020 [Request for Judicial Notice Exhibit "2;" Quitclaim Deed]. Trustee concedes in the opposition that this cause of action can be dismissed as to Jason and Timothy Hughes. But it is not entirely clear to the court that the Tim to Jason deeds are the only transfers in question. What about the post-petition cashing of the \$130,000 check? Is that an avoidable transfer? Since ¶47 sweeps into the Claim for Relief all previous allegations, the reader is left very uncertain exactly what is intended for §549 analysis; more clarity is needed. But the movants, by Trustee's own admission, are not involved. Whether they could be involved, however, requires a tightening up of the allegations to clarify which transfers and under what legal theory relief is being sought.

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

Thursday, July 30, 2020

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Chapter 7

4. Conclusion

The remaining claims implicated either Debtor, Betty McCarthy or both, but not Jason or Tim Hughes. As discussed, some portions of Claims for Relief might involve parties other than Jason or Tim Hughes. Thus, those claims remain. For the reasons discussed above, this motion should be granted, but with leave to amend where Trustee has a good faith belief that doing so will be productive. In some cases, it is necessary merely to clear up and tighten up some of the allegations and correct what appear to be obvious errors.

Grant with leave to amend as to the claims discussed.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

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

Thursday, July 30, 2020

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Chapter 7

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Represented By
Michael G Spector

Jason Paul Hughes

Represented By
Michael G Spector

Betty McCarthy

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, July 30, 2020

Hearing Room 5B

2:00 PM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#13.00 Motion For Possible Incarceration
(set from order of release entered 4-24-20)

Docket 0

Tentative Ruling:

Tentative for 7/30/20:
No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein
Tracy Casadio

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Ronald N Richards

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

Tuesday, August 4, 2020

Hearing Room 5B

10:30 AM

8:20-11579 Mariana Gonzalez

Chapter 7

#1.00 Motion For Relief From The Automatic Stay PERSONAL PROPERTY

**FINANCIAL SERVICES VEHICLE TRUST
Vs.
DEBTOR**

Docket 11

Tentative Ruling:

Tentative for 8/4/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Mariana Gonzalez

Represented By
Richard L Barnett

Movant(s):

Financial Services Vehicle Trust

Represented By

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

Tuesday, August 4, 2020

Hearing Room 5B

10:30 AM

CONT... Mariana Gonzalez

Marjorie M Johnson

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Tuesday, August 4, 2020

Hearing Room 5B

10:30 AM

8:18-13016 Philip Q Dowsing

Chapter 13

#2.00 Motion for Relief From The Automatic Stay REAL PROPERTY

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 43

Tentative Ruling:

Tentative for 8/4/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

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**

Tuesday, August 4, 2020

Hearing Room 5B

10:30 AM

8:20-10045 Young Ha Kim

Chapter 7

#2.10 Motion For Relief From The Automatic Stay REAL PROPERTY

**TOWD POINT MASTER FUNDING TRUST 2019-PM7
Vs.
DEBTOR**

Docket 50

Tentative Ruling:

Tentative for 8/4/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Young Ha Kim

Represented By
Christian T Kim

Movant(s):

Towd Point Master Funding Trust

Represented By
Austin P Nagel

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

Tuesday, August 4, 2020

Hearing Room 5B

10:30 AM

CONT... Young Ha Kim

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**

Tuesday, August 4, 2020

Hearing Room 5B

10:30 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#3.00 Motion For Relief From Automatic Stay With ACTION IN NON-BANKRUPTCY FORUM

INTERNAL REVENUE SERVICE

Vs.

DEBTOR

Docket 75

Tentative Ruling:

Tentative for 8/4/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Rafik Youssef Kamell

Represented By

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

Tuesday, August 4, 2020

Hearing Room 5B

10:30 AM

CONT... Rafik Youssef Kamell

Robert P Goe

Chapter 11

Movant(s):

UNITED STATES OF AMERICA

Represented By
Najah J Shariff

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

Tuesday, August 4, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#4.00 STATUS CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(cont'd from 7-07-20 per order approving stip. to cont. trustee to file responsive pleadings and status conference report & s/c entered 6-19-20)

Docket 571

***** VACATED *** REASON: CONTINUED TO 9-01-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE HEARING ON MOTION FOR ADMINISTRATIVE
CLAIM BY TERRACE TOWER ORANGE COUNTY, LLC ENTERED 7-
30-20**

Tentative Ruling:

Tentative for 5/27/20:

By stipulation this is treated as a status conference. But no status conference report is filed and the parties have not really informed the court as to how much time is needed for discovery, or what appropriate deadlines would look like.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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**

Tuesday, August 4, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Tuesday, August 4, 2020

Hearing Room 5B

11:00 AM

8:18-13608 Darren Dean McGuire

Chapter 7

#5.00 Motion for: (1) Approval of the Settlement between the Trustee and Darren Dean McGuire; and (2) an Order Revoking any Technical Abandonment of the Broker Claims
(cont'd from 7-07-20 per order approving fourth stip. to cont. hrg re: mtn to approve trustee's compromise with debtor entered 6-23-20)

Docket 118

***** VACATED *** REASON: CONTINUED TO 8/11/20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION TO CONTINUE
HEARING RE: MOTION TO APPROVE TRUSTEE'S COMPROMISE
WITH DEBTOR ENTERED 7-16-20**

Tentative Ruling:

- NONE LISTED -

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
Jason B Komorsky

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

Wednesday, August 5, 2020

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)
(cont'd from 4-29-20)**

Docket 118

Tentative Ruling:

Tentative for 8/5/20:
Continue until hearing on final decree.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 4/29/20:
Status?

Tentative for 3/11/20:
An updated status report would have been useful. When can final decree be anticipated?

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

Wednesday, August 5, 2020

Hearing Room 5B

10:00 AM

CONT... Cypress Urgent Care, Inc.

Chapter 11

Tentative for 3/4/20:
Continue to March 11, 2020 at 10:00AM.

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

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

Wednesday, August 5, 2020

Hearing Room 5B

10:00 AM

8:19-11525 Christopher John Windisch and Mimoza Windisch

Chapter 11

#2.00 Motion To File Claim After Claims Bar Date Notice Of Opportunity To Request A Hearing On Motion [LBR 9013-1(o)] And Byline Banks Motion To Allow Late Filed Proof of Claim Number 8-2

Docket 95

Tentative Ruling:

Tentative for 8/5/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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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, August 5, 2020

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#2.10 Motion For Relief From Automatic Stay ACTION IN NON-BANKRUPTCY FORUM

**COUNTRY VILLA SOUTHBAY LLC
Vs.
DEBTORS**

Docket 2739

Tentative Ruling:

Tentative for 8/5/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Plaza Healthcare Center LLC

Represented By
Ron Bender
Lindsey L Smith
Krikor J Meshefejian
Monica Y Kim
Kurt Ramlo

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

Wednesday, August 5, 2020

Hearing Room 5B

10:00 AM

CONT... Plaza Healthcare Center LLC

Chapter 11

Michelle S Grimberg
Philip A Gasteier
Jacqueline L James
Beth Ann R Young

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

Wednesday, August 5, 2020

Hearing Room 5B

11:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#3.00 STATIS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 5-27-20)**

Docket 1

Tentative Ruling:

Tentative for 8/5/20:
No tentative. See #4.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 5/27/20:
See #8 and 9.

Tentative for 4/8/20:
No status report filed? See #12 and #13. Continue to coincide with confirmation hearing. Appearance is optional.

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

Wednesday, August 5, 2020

Hearing Room 5B

11:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

Tentative for 2/5/20:
Continue status conference. Continue approximately 60 days to allow
analysis of plan and disclosure statement due 2/28/20.

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.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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

Wednesday, August 5, 2020

Hearing Room 5B

11:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#4.00 Motion to Use Cash Collateral
(cont'd from 5-27-20)**

Docket 5

Tentative Ruling:

Tentative for 8/5/20:

This is an oft-continued request for use of cash collateral. As the court recalls, there is only a very marginal slice of equity in the collateral. The court has repeatedly stated (starting in November) that status quo cannot be expected to last indefinitely, and the tentative from last time (5/27) said one last extension would be granted. But the court observes now that somehow confirmation of the plan has moved to September 2. The June MOR shows a dwindling cash balance. To exacerbate the court's concern, no further status report is offered, although Ms. Altieri does file a declaration suggesting that everything is unfolding more or less as expected, with only a temporary lull in rental payments due to the pandemic. Unless the secured creditor is willing to go along further the court sees little encouragement on this record or reason to continue the use beyond September 2. So, despite the court's earlier admonition we should continue on the same basis until the continued confirmation hearing, but further continuances of that date should not be expected and, if sought, had better include the secured creditor's acquiescence as it may be without further use of cash collateral. It probably also goes without saying that the proposed plan should be the very best possible as further time is not assured.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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

Wednesday, August 5, 2020

Hearing Room 5B

11:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court’s website has been updated with this new information.

Tentative for 5/27/20:
see #9. Continue on same terms one final time.

Tentative for 4/8/20:
Continue on same terms pending confirmation hearing. Appearance is optional.

Tentative for 2/5/20:
Continue use on same terms pending continued status conference.

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?

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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

Wednesday, August 5, 2020

Hearing Room 5B

11:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

#5.00 Confirmation Of Chapter 11 Plan
(set from 4-08-20 discl stmt hrg)
(cont'd from 5-27-20)

Docket 66

***** VACATED *** REASON: CONTINUED TO 9-02-20 AT 11:00 A.M.
PER ORDER GRANTING STIPULATED REQUEST TO CONTINUE
CONFIRMATION HEARING ENTERED 6-26-20**

Tentative Ruling:

Tentative for 5/27/20:

This is the hearing on confirmation of debtor's plan. It is opposed in objections filed by two creditors.

A. Bryson

The first objection comes from judgment creditor from Class 2E, Stephanie Bryson ("Bryson"). Bryson obtained a judgment against Debtor in the amount of \$270,658.85. Bryson has liens on two properties located in Massachusetts, the Chandler property and the Adams property. The Chandler property was valued at \$775,000 (though Bryson values it at \$795,000). The Adams property was valued at \$978,300 (Bryson values it at \$1,240,000).

The plan proposes to pay off debt of \$330,386.91 (as of 10/22/19) over a period of 180 months, with monthly "interest only" payments of \$1,376.61, then a balloon payment of \$330,386.91 at the end of the plan.

Bryson argues that the plan does not satisfy the best interest of creditors test. Bryson does not believe that the Debtor's liquidation analysis is accurate, due partly to the undervaluing of the encumbered properties. If Bryson's fair market valuations are used instead of Debtor's, then the result is a net positive instead of negative. Bryson concedes that after administrative

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

Wednesday, August 5, 2020

Hearing Room 5B

11:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

costs were factored in a chapter 7 liquidation there would still be nothing left for unsecured creditors, whereas the current plan provides for at least some recovery for unsecured creditors. Despite this fact, Bryson argues that the plan still cannot be considered fair and equitable.

Specifically, Bryson argues that the 5% interest rate contemplated in the plan is not adequate to account for the risks involved. Bryson is not a lender and her Massachusetts judgment accrues interest at 12% per year. Bryson asserts that she could foreclose on the Massachusetts properties, which would pay the judgment debt in full. Bryson asserts that the plan also has feasibility issues, and the interest rate must be adjusted to account for that risk.

Bryson asserts that the plan relies on rental income from two properties in Massachusetts. Any unplanned or prolonged vacancy throws the plan into doubt. Furthermore, Bryson asserts that Debtor's financial history suggests that her projected income is optimistic to say the least. The properties are also old and may need repairs over the life of the plan. Those repairs could come at significant cost, which again, would jeopardize the plan. The supplement to the Bryson opposition states that Debtor is including a \$16,000 annual bonus from her employer, Clean Energy. However, it appears that the bonus will be in the form of stock, not cash. Thus, Bryson concludes that the plan is simply not feasible and should not be confirmed. Not raised by Bryson, but of concern to the court, is what happens at the end of 180 months on the balloon? One imagines that the debtor will either refinance or sell, but the prospect of so doing should at least be explained. Interest-only, non-amortizing lien treatments are inherently riskier than fully amortizing. This is because the creditor is never put in a position of comfort on its principal, but always hangs on the precipice. There may be a further complication here in that Massachusetts rate of interest on judgment liens is reported to be 12%, which means that the balance will actually increase over time, unless it is intended that the cramdown rate supplant the state judgment

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

Wednesday, August 5, 2020

Hearing Room

5B

11:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

rate. That point needs clarification and briefing.

This is not inherently unconfirmable, but the fundamental precept is that the risks imposed must be fully paid. In the court's view, 5% is too low to accomplish "present value" under §1129(b)(2)(A) considering this point and that Bryson appears to be in second position, with little or no cushion. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Debtor argues for the prime plus approach found in *Till* and argues that *North Valley Mall* is distinguishable. But her argument is not convincing. What is the principled difference between a judgment lien and a defaulted loan? They are both 'allowed secured claims' and that is what the Code requires be given present value if paid over time. Debtor confuses resort to market data to help analyze what is present value (an economic concept informed by data) with the fact that most data available happens to originate in the loan marketplace. That is because lenders consult varied data when deciding whether to extend credit, and many factors such as collateral value and creditworthiness go into the analysis. That is a process done before the fact. But that does not change the fact that both are secured claims being paid over time so their origin seems immaterial *after the fact* where the court in cramdown analysis is asked to make a determination of factors in situations where no real market exists. Even if the court could be persuaded that the *Till* approach (which was after all about a truck loan and seemingly even less relevant) were correct, a 1.75% adjustment is still way too low.

B. U.S. Bank National Association

The real property that is the subject of this Objection is located at 33 Chandler Street, Newton, MA 02458 (the "Property"). Creditor holds a security interest in the Property as evidenced by a Note and Mortgage executed by the Debtor. Said Note and Mortgage are attached to Creditor's proof of claim (the "Proof of Claim") which was filed in the instant case as Claim No. 5-1.

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

Wednesday, August 5, 2020

Hearing Room 5B

11:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

The Proof of Claim provides for a secured claim in the amount of \$590,127.29. This amount has increased since the petition date as interest has accrued and Creditor has made post-petition escrow advances to protect its interest in the Property. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. Creditor's claim is treated in the Plan under Class "2B." The Plan provides that the Debtor will pay Creditor's claim the amount of \$590,127.29, over 360 months (30 years) at 4.625% interest, with equal monthly payments of \$3,034.08.

The Plan fails to provide for maintenance of property insurance and timely payment of property taxes. The Plan should specify whether Debtors intend to maintain property insurance and tax payments directly or through establishment of an escrow account with Creditor. Creditor has advanced approximately \$7,597.52 for post-petition property taxes on account of the Property. The Plan does not provide for reimbursing Creditor for such advances which were made post-petition for the benefit of the estate. Such advances qualify as administrative expenses and must be cured on or before the effective date of the plan.

The Plan indicates that the value of the Property is \$775,000.00. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. The plan provides for a total secured claim in the reduced amount of \$590,127.29. As the plan fails to provide for the full amount of Creditor's secured claim, Debtor's Plan cannot be confirmed as is, and the portion that is payable as an administrative claim must be dealt with.

C. Conclusion

The objections raise some good points regarding feasibility. According to Bryson, Debtor's own financial data demonstrate that she will not be able to

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CONT... Rosemaria Geraldine Altieri

Chapter 11

make good on the plan payments. This plan appears to have a very (perhaps overly) optimistic outlook on Debtor's finances. Further, expenditures that may be necessary are not addressed at all, like insurance, maintenance, and the fact that there may be a \$7597.52 administrative claim.

Debtor points out that Bryson has not provided any analysis as to what the appropriate interest rate would be. Debtor also points out that under the plan, unsecured creditors get at least some recovery, whereas in a liquidation, they would receive nothing. While, of course, the court wants unsecured creditors to get something, this does not substitute for the fact that it is debtor's burden to prove not only feasibility, but that cramdown treatment is providing the present value of the objecting secured claims and that this plan is better than liquidation. This has not been done. Furthermore, Debtor asserts that the First Amended Plan provides that all secured creditors encumbering the Rental Properties will receive deferred cash payments totaling the allowed amount of their claims while retaining their liens on the Rental Properties. But this assertion is devoid of analysis and, on a true present value basis, probably wrong. As Debtor's plan seems to be premised on everything going as planned over the 15 (or even thirty) years of this Chapter 11 plan, with little or no wiggle room, and while not even apparently dealing with all likely expenses, the court requires Debtor to answer Bryson's concerns about feasibility. Given the current economic climate, Debtor should account for the realistic probability of sustained occupancy in the rental properties as well as her own employment prospects.

No tentative. Continue for approximately 30 days to afford one final opportunity to fill in the gaps.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

The purpose of a disclosure statement is "to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan." Duff v. U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996). "Adequate information" is defined under 11 U.S.C. Sec. 1125(a)(1) as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interest of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan."

Bryson's objections notwithstanding (though feasibility seems questionable), the DS appears to provide adequate information. It is also worth noting that the DS has not drawn any other opposition. The plan may ultimately not be confirmable if feasibility proves too speculative, as it very well might be given the current economic climate, or if cramdown is attempted and the value of the rental properties is too low as Bryson has alleged, suggesting that creditors will do better in a liquidation (the so-called best interest of creditors test). Debtor will have the burden on these issues in order to achieve confirmation, but at this stage, the DS does not appear deficient from an *information* standpoint, especially with the detailed risk factors analysis.

Grant. Set confirmation date and deadlines.

Appearance is optional.

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Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1604888613>

ZoomGov meeting number: 160 488 8613

Password: 966244

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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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 4-29-20 per order continuing status conference ent. 4-28-20)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-05-20 AT 10:00 A.M.
PER ORDER CONTINUING STATUS CONFERENCE ENTERED 8-03-20**

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

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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

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10:00 AM

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

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

#2.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence
(con't from 4-29-20 per order cont. s/c entered 4-20-20)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-12-20 AT 10:00 A.M.**
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 7-15-20

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

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CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

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8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01088 Marshack v. Interstate Oil Company

#3.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims

Docket 1

Tentative Ruling:

Tentative for 8/6/20:
What is status of answer? Continue?

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Interstate Oil Company

Pro Se

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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8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01089 Marshack v. Supreme Oil Company

#4.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims

Docket 1

Tentative Ruling:

Tentative for 8/6/20:

Deadline for completing discovery: December 30, 2020
Last date for filing pre-trial motions: January 15, 2021
Pre-trial conference on: January 28, 2021 @ 10:00AM
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Supreme Oil Company

Pro Se

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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10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

- #5.00** 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 at s/c held 8-15-19)
(cont'd from 6-25-20 per order entered 6-22-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-10-20 AT 10:00 PER ORDER APPROVING THE STIPULATION TO CONTINUE PRETRIAL CONFERENCE ENTERED 7-30-20**

Tentative Ruling:

Tentative for 2/27/20:

This is supposed to be a pre-trial conference. Sadly, it is not that and this is hardly the first time in this series of cases where the court has been sorely frustrated.

As required by the LBRs, the parties were to have met and conferred in good faith to narrow the issues so that trial time could be focused on those items truly in dispute. Local Rule 7016-1 sets forth a very specific timeline and list of duties incumbent on each side. At LBR 7016-1(b)(1)(C) Plaintiff was to have initiated a meet and confer *at least 28 days* before the date set for the pre-trial conference. According to Defendant's papers, this did not occur 28 days before the originally scheduled pretrial conference of Feb. 6, *or indeed at all* until February 13 when Plaintiff reportedly filed his "Pretrial Stipulation" in which he claims it was Defendants who "refused to participate in the pretrial stipulation process" necessitating what is actually a unilateral stipulation. Defendant on the next day, February 14, filed his Unilateral Pretrial Stipulation. Defendant does acknowledge at his page 2, line 1-2 that Plaintiff sent something over to Defendant on January 28, but it was reportedly "not complete in any respect." As to the original date of the Pretrial

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CONT... Tara Jakubaitis

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Conference of February 6, that was very late. Whether that document was anything close to what was later filed unilaterally on Feb. 13 is not clarified. But what is very clear is that these two unilateral "stipulations" are largely worthless in the main goal of narrowing issues inasmuch as the parties seem to be discussing two entirely different complaints. Defendant focuses on what the former trustee (now deceased) may have known about the existence of a loan undisclosed on the schedules made by Frank to WeCosign, Inc., which loan was reportedly worthless in any case, and about how that knowledge should be imputed to Plaintiff Marshack. But why the trustee's knowledge, imputed or otherwise, should justify an alleged misstatement or omission to list assets under oath, is never quite explained. One presumes Defendant will argue materiality. Plaintiff focuses on the alleged use of another corporation, Tara Pacific, as the repository of funds taken from WeCosign as an alleged fraudulent conveyance and then used by Frank and Tara as a piggy bank between 2010 and 2012 and upon alleged misstatements in the schedules about Tara's and Frank's actual average income. While this sounds like a fraudulent conveyance theory the gist seems to be that Tara and Frank were using ill-gotten gains to live on while denying in respective schedules that they had any income (or assets) thus comprising a false oath. There probably are connections between these different stories, but that is not made at all clear (and it must be made clear). Plaintiff's overlong "stipulation" is written more like a 'cut and paste' brief containing long tables with over 59 footnotes inserted. One presumes this represents a good faith compilation of bank records, but even that is left unclear. But the language used reads purely as advocacy, not an attempt to narrow the disputed facts in a way the other side can sign.

Buried in the Defendant's recitations (at page 4, ¶ 13) is the argument that the case should be dismissed as outside the statute of limitation (or statute of repose in Defendant's terms) described at §727(e)(1). Why this was not raised 50+ months ago when the action was filed by Rule 12(b) motion or otherwise is not explained. What the Defendant expects the court

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CONT... Tara Jakubaitis

Chapter 7

to do with this point now is also not explained.

In sum, this case is still a disorganized mess. This is not the first time the court has voiced its utter frustration with this series of cases. Rather than being ready for trial, we are very much still at the drawing board. The court is not happy about it as this is hardly a young case.

What is the remedy? The court could order sanctions against either side, or maybe both sides, and that would be richly deserved. The court could decide that Plaintiff as the party with the initial duty under the LBRs should suffer the brunt of just consequences by a dismissal, as the ultimate sanction. But however tedious and frustrating this has become the court would rather see these cases decided on their merits (if any) *if that is possible*. But what the court will not do is to further indulge these parties in disobeying the LBRs and generally continuing to shamble along, never getting anywhere.

Therefore, **it is ordered:**

1. The parties will immediately meet and confer about reducing the two unilateral 'stipulations' into an intelligible, single, useful list of items not in dispute and therefore requiring no further litigation;
2. The resulting stipulation will be concise, user-friendly and focused on the actual legal issues to be tried;
3. The stipulation will contain a concise list of exhibits to be offered at trial identified by number for Plaintiff and letter for Defendant;
4. The parties will attempt in good faith to resolve any evidentiary objections to admission of the exhibits, and if agreement cannot be reached, state concisely the reasons for or against admissibility;
5. The stipulation will contain a list of witnesses to be called by each side, with a very brief synopsis of the expected testimony;

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6. All factual matters relevant and truly in dispute will be listed, by short paragraph;
7. All legal issues to be decided will be separately listed, by paragraph;
8. Any threshold issues such as Defendants argument about statute of repose will be separately listed along with a suggested means of resolving the issue; and
9. Both sides will estimate expected length of trial, mindful that the court requires all direct testimony by declaration with the witnesses available at trial for live cross and re-direct.

In sum the parties are to do their jobs. If the court's order is not followed *in enthusiastic good faith, and completely* with the goal of narrowing the issues, and if the resulting product is not a concise, user-friendly joint pretrial stipulation, the offending party or parties will be subject to severe sanctions which may include monetary awards and/or the striking or either the complaint or answer.

Continue about 60 days to accomplish the above.

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.

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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
discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can
be set.

Tentative for 5/4/17:
Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines
make sense at this juncture given the ongoing disputes over even
commencing discovery?

Tentative for 3/23/17:
See #13.1

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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

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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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

**#6.00 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 2-27-20 per order approving stip. ent 2-27-20)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)
(con't from 4-29-2020 at 10:00 a.m. per order ent. 4-13-2020)**

Docket 12

***** VACATED *** REASON: CONTINUED TO 10-08-20 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION TO CONTINUE PRE-
TRIAL ENTERED 8-04-20**

Tentative Ruling:

Tentative for 2/27/20:

Where is the joint pre-trial stipulation? What is status? Should case be dismissed for failure to prosecute?

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.

Party Information

Debtor(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Defendant(s):

U.S. Department of Education

Pro Se

Wells Fargo Education Financial

Pro Se

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CONT... Hutton Douglas Michael Brown

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Nel Net Loan Services

Pro Se

Plaintiff(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

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10:00 AM

8:19-10414 James Michael Roberts

Chapter 7

Adv#: 8:19-01083 Peltier v. Roberts

**#7.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
(set from s/c hrg held on 8-29-19)
(rescheduled from 4-30-2020 at 10:00 a.m. per court)
(cont'd from 4-29-20 per order on stip to cont pre-trial entered 4-07-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION TO DISMISS ADVERSARY PROCEEDING ENTERED 7-
21-20**

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.

Party Information

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

8:19-11359 Ronald E. Ready

Chapter 7

Adv#: 8:19-01154 Paramount Residential Mortgage Group Inc v. Ready

#8.00 PRE-TRIAL CONFERENCE RE:.. Complaint For Non-Dischargeability Of Debt Pursuant To 11 USC Section 523(a)(2) And 11 USC Section 523(a)(6)

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 8, 2020 AT 10:00 A.M.PER ORDER APPROVING THE STIPULATION TO CONTINUE ENTERED 6/18/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald E. Ready

Represented By
Joseph A Weber
Fritz J Firman

Defendant(s):

Ronald E Ready

Represented By
Fritz J Firman

Plaintiff(s):

Paramount Residential Mortgage

Represented By
Shawn N Guy

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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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

**#9.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 5-6-20 per order approving stip. to cont. amended mtn to dsm and s/c entered 4-17-20)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-05-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 7-23-20**

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

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

Thursday, August 6, 2020

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

#10.00 Motion to Dismiss Adversary Proceeding
**(con't from 5-06-20 per order approving stip. to cont. amended mtn to
dism and s/c entered 4-17-20)
(rescheduled from 5-7-2020 at 11:00 a.m. per court)**

Docket 3

***** VACATED *** REASON: CONTINUED TO 11-05-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE AMENDED
MOTION TO DISMISS AND STATUS CONFERENCE ENTERED 7-23-20**

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 6, 2020

Hearing Room

5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#11.00 Motion To Dismiss Complaint Against CapCall, LLC, Pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6)

Docket 120

***** VACATED *** REASON: CONTINUED TO 9-03-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT CAPCALL, LLC TO CONTINUE HEARING ON MOTION
TO DISMISS ENTERED 7-23-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

NEXGEN Capital Limited Liability Pro Se

Queen Funding LLC, a New Jersey Pro Se

Yes Funding Corp., a New York Pro Se

Atlas Acquisitions, LLC, a New Pro Se

Capital Stack Fund II LLC, a Pro Se

New Era Lending, a California Pro Se

Arch Capital Advisors, Inc., a Pro Se

CoreFund Capital, LLC, a Texas Represented By
Lei Lei Wang Ekvall

CapCall LLC, a New York Limited Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware Represented By

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

Thursday, August 6, 2020

Hearing Room 5B

11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

	Michael W Davis
Forward Financing LLC, a Delaware	Represented By M Douglas Flahaut Annie Y Stoops
Mantis Funding LLC, a Delaware	Represented By Howard Steinberg

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe Rafael R Garcia-Salgado
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 11, 2020

Hearing Room

5B

10:30 AM

8:20-11824 Samuel Agudo Valientes

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST

Vs

DEBTOR; AND THOMAS H. CASEY, CH 7 TRUSTEE

Docket 8

Tentative Ruling:

Tentative for 8/11/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Samuel Agudo Valientes

Represented By
Andrew Nguyen

Movant(s):

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

Tuesday, August 11, 2020

Hearing Room 5B

10:30 AM

CONT... Samuel Agudo Valientes
Honda Lease Trust

Represented By
Vincent V Frounjian

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Tuesday, August 11, 2020

Hearing Room 5B

10:30 AM

8:20-11740 Ryan C Fugate

Chapter 7

#1.10 Motion for relief from the automatic stay PERSONAL PROPERTY

**AMERICREDIT FINANCIAL SERVICES, INC.
vs.
DEBTOR**

Docket 7

Tentative Ruling:

Tentative for 8/11/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Ryan C Fugate

Represented By
Joel M Feinstein

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 11, 2020

Hearing Room 5B

10:30 AM

8:20-11784 Melissa Ann Belanger

Chapter 7

#1.20 Motion for relief from the automatic stay PERSONAL PROPERTY

**AMERICREDIT FINANCIAL SERVICES
Vs.
DEBTOR**

Docket 15

Tentative Ruling:

Tentative for 8/11/20:
Grant. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Melissa Ann Belanger	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 11, 2020

Hearing Room 5B

10:30 AM

8:18-12052 Frank Bowers, Jr.

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-21-20)

**BAXTER CREDIT UNION
Vs
DEBTOR**

Docket 96

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF NOTICE OF MOTION AND MOTION FOR RELIEF
FROM THE AUTOMATIC STAY FILED 8-07-20**

Tentative Ruling:

Tentative for 7/21/20:

Grant absent loan being current post petition or APO. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Frank Bowers Jr.

Represented By
Peter Rasla

Movant(s):

Baxter Credit Union

Represented By

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

Tuesday, August 11, 2020

Hearing Room 5B

10:30 AM

CONT... Frank Bowers, Jr.

Chapter 13

Daniel K Fujimoto
Alan Steven Wolf
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 11, 2020

Hearing Room 5B

10:30 AM

8:19-12279 Maria Mercedes Ibarra de Acosta

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 34

Tentative Ruling:

Tentative for 8/11/20:
Grant absent status of current post confirmation or stipulation to APO.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

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

Tuesday, August 11, 2020

Hearing Room 5B

10:30 AM

CONT... Maria Mercedes Ibarra de Acosta

Chapter 13

Debtor(s):

Maria Mercedes Ibarra de Acosta

Represented By
Benjamin R Heston

Movant(s):

WELLS FARGO 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, August 11, 2020

Hearing Room 5B

10:30 AM

8:20-11327 Heather Huong Ngoc Luu

Chapter 7

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

**E-Z HOUSING GROUP, LLC
Vs.
DEBTOR**

Docket 34

Tentative Ruling:

Tentative for 8/11/20:
grant. No execution absent further order of bankruptcy court.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Heather Huong Ngoc Luu

Represented By
Joshua R Engle

Movant(s):

Fritz J. Firman

Represented By

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

Tuesday, August 11, 2020

Hearing Room 5B

10:30 AM

CONT... Heather Huong Ngoc Luu

Fritz J Firman

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

8:18-13608 Darren Dean McGuire

Chapter 7

#5.00 Motion for: (1) Approval of the Settlement between the Trustee and Darren Dean McGuire; and (2) an Order Revoking any Technical Abandonment of the Broker Claims
(cont'd from 8-04-20 per order approving flfth stip. to cont. hrg re: mtn to approve trustee's compromise with debtor entered 7-16-20)

Docket 118

***** VACATED *** REASON: CONTINUED TO 9-08-20 AT 11:00 A.M.
PER ORDER APPROVING SIXTH STIPULATION TO CONTINUE
HEARING RE: MOTION TO APPROVE TRUSTEE'S COMPROMISE
WITH DEBTOR ENTERED 8-07-20**

Tentative Ruling:

- NONE LISTED -

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
Jason B Komorsky

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

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

8:18-11547 Donna Marie Barnett

Chapter 7

#6.00 Trustee's Final Report And Applications For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

WEILAND GOLDEN GOODRICH LLP, ATTORNEY FOR CH 7 TRUSTEE

GROSTEIN TEEPLE LLP, ACCOUNTANT FOR CH 7 TRUSTEE

Docket 74

Tentative Ruling:

Tentative for 8/11/20:
Allow as prayed. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Donna Marie Barnett

Represented By
Michael N Nicastro

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**

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

CONT...

Donna Marie Barnett

Beth Gaschen

Chapter 7

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

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

8:18-13366 Karen Minh Nguyen

Chapter 7

#7.00 Trustee's Final Report And Applications For Compensation

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

DONALD W. SIEVEKE, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

CHARGES, U.S. BANKRUPTCY COURT

Docket 77

Tentative Ruling:

Tentative for 8/11/20:
Allow as prayed. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Karen Minh Nguyen

Represented By
Rex Tran

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

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

CONT... Karen Minh Nguyen

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**

Tuesday, August 11, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 50 Filed By Stearns Lending, LLC
(cont'd from 6-30-20 per order approving fifth stip. re: claim no. 50 entered 6-22-20)

Docket 248

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M.
PER ORDER APPROVING SIXTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND STEARNS
LENDING, LLC ETC. RE: MOTIONS TO DISALLOW PROOF S OF
CLAIM 50 ENTERED 7-30-20**

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, August 11, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#9.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 51 Filed By Lakeview Loan Servicing, LLC (cont'd from 6-30-20 per ordered approving fifth stip. to cont. hrg. entered 6-22-20)

Docket 249

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M. PER ORDER APPROVING SIXTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND STEARNS LENDING ETC. RE: MOTIONS TO DISALLOW PROOFS OF CLAIM #51 ENTERED 7-30-20**

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, August 11, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#10.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 52 Filed By First Federal Bank of Florida
(cont'd from 6-30-20 per order ent approving fifth stip. to cont. hrg entered 6-22-20)

Docket 250

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M.
PER ORDER APPROVING SIXTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORP AND STEARNS ETC. RE:
OBJECTION TO MOTION TO DISALLOW PROOF OF CLAIM #52
ENTERED 7-30-20**

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, August 11, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#11.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 53 Filed By Lakeview Loan Servicing, LLC (cont'd from 6-30-20 per order approving flfth stip. to cont. hrg clm. 53 entered 6-22-20)

Docket 251

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M. PER ORDER APPROVING SIXTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORP. AND STEARNS LENDING, LLC ETC. RE: OBJECTIONS TO AND MOTION TO DISALLOW PROOF OF CLAIM #53 ENTERED 7-30-20**

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, August 11, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#12.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 54 Filed By Lakeview Loan Servicing, LLC (cont'd from 6-30-20 per order approving flfth stip. to cont. clm # 54 entered 6-22-20)

Docket 252

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M. PER ORDER APPROVING SIXTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND STEARNS LENDING, LLC ETC. RE: THE OBJECTIONS TO AND MOTION TO DISALLOW PROOFS OF CLAIM #54 ENTERED 7-30-20**

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, August 11, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#13.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 61 Filed By Lakeview Loan Servicing, LLC (cont'd from 6-30-20 per order approving flfth stip. to cont. hrg entered 6-22-20)

Docket 255

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 PER ORDER APPROVING SIXTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORP AND STEARNS LENDING, LLC, ETC. RE: THE OBJECTION AND MOTION TO DISALLOW PROOF OF CLAIM #61 ENTERED 7-30-20**

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, August 11, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#14.00 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
(cont'd from 4-07-20)
(cont'd from 6-30-20 per order entered 6-12-20)

Docket 256

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M.
PER ORDER APPROVING SIXTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
NATIONSTAR MORTGAGE COMPANY ADJOURNING THE HEARING
AND MOTION TO DISALLOW PROOF OF CLAIM NO. 62 ENTERED 8-
07-20**

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, August 11, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#15.00 Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
(cont'd from 6-30-20)

Docket 258

Tentative Ruling:

Tentative for 8/11/20:

Deadline for completing discovery: December 31, 2020.

Last date for filing pre-trial motions: January 14, 2021.

Pre-trial conference on: February 4, 2021 @ 10:00 a.m.

Joint pre-trial Stipulation due per local rules.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 6/30/20:

Serious issues are raised in Lexington's reply, joined by the Trustee.

Explanations are required concerning the relationship between the claimant and Mr. Browndorf. Treat as a status conference preliminary to a contested matter/adversary proceeding.

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

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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, August 11, 2020

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. 66 Filed By Statebridge Company, LLC **(rescheduled from 5-26-2020 at 11:00 a.m per court) (cont'd from 6-30-20 per order approving flfth stip. re: claim no. 66 entered 6-17-20)**

Docket 259

***** VACATED *** REASON: OFF CALENDAR - THE OBJECTION IS MOOT AND WITHDRAWN AND THE HEARING IS CANCELLED - PER ORDER APPROVING STIPULATION ENTERED 8-07-20 DOCUMENT #736**

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, August 11, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#17.00 STATUS CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select
Portfolio Servicing, Inc.
(cont'd from 6-30-20 per fifth stip. order entered 6-17-20)
(set as s/c per order entered on 8-06-20)**

Docket 260

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 2/25/20:
See #11

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**

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

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

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#18.00 Lexington National Insurance Corporation's Objection to and Motion to Disallow Proof of Claim No. 70 filed by Carrington Mortgage Services, LLC
(cont'd from 4-07-20 per court's own mtn)
(cont'd from 6-30-20 per order approving third stipulation re: clm no. 70 entered 6-24-20)

Docket 263

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION &
CARRINGTON MORTGAGE SERVICES, LLC RE: MOTION TO
DISALLOW PROOF OF CLAIM NO. 70 ENTERED 7-30-20**

Tentative Ruling:

Tentative for 2/25/20:
See #11

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, August 11, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#19.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim No.. 87 Filed By Trust Bank
(cont'd from 6-30-20 per order approving third stip. & order entered 6-29-20)

Docket 449

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M.
PER STIPULAITON FOURTH STIPULATION BETWEEN LEXINGTON
NATIONAL INSURANCE CORPORATION AND TRUST BANK
ADJOURNING THE OBJECTIONS TO PROOFS OF CLAIM NO. 87 AND
88 ENTERED 8-10-20**

Tentative Ruling:

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, August 11, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#20.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim No. 88 Filed by Trust Bank
(cont'd from 6-30-20 per ordered entered 6-29-20)

Docket 451

***** VACATED *** REASON: CONTINUED TO 9-29-20 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND THE
OBJECTIONS TO PROOFS OF CLAIM NO. 87 AND 88 ENTERED 8-10-
20**

Tentative Ruling:

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, August 11, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#21.00 STATUS CONFERENCE RE: Select Portfolio Servicing, Inc's Objection to and Motion to Disallow or Subordinate Proof of Claim No. 44 filed by Lexington National Insurance Corporation
**(cont'd from 6-30-20 per order approving fifth stip. to cont. entered 6-17-20)
(set from order entered 8-06-20)**

Docket 476

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Movant(s):

SELECT PORTFOLIO

Represented By
Lauren A Deeb

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

Tuesday, August 11, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

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

Tuesday, August 11, 2020

Hearing Room

5B

11:00 AM

8:20-10441 Scot Matteson

Chapter 7

#22.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against an Individual
(cont'd from 6-23-20 per order approving fifth stip. to cont. status hrg entered 6-09-20)

Docket 1

*** VACATED *** REASON: CONTINUED TO 10-13-20 AT 11:00 A.M.
PER ORDER APPROVING SIXTH STIPULATION TO CONTINUE
STATUS HEARING AND TO EXTEND TIME TO FILE RESPONSE TO
INVOLUNTARY PETITION FILED BY ELIZABETH NIGRO &
ASSOCIATES, APC ENTERED 7-27-20

Tentative Ruling:

Tentative for 3/10/20:

The timing in this case is muddled because two summons were issued and the deadline to respond to the reissued summons is after the hearing on the status conference in this case. It might be best to continue this status conference to March 17, 2020 at 10:00 a.m. so that the court can evaluate any response that is filed. If no response is received, the order for relief should be entered.

Party Information

Debtor(s):

Scot Matteson

Pro Se

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

Wednesday, August 12, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1603670147>

ZoomGov meeting number: 160 367 0147

Password: 634858

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Wednesday, August 12, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

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- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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

Wednesday, August 12, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, August 12, 2020

Hearing Room 5B

10:00 AM

8:14-15864 Steven M Dicterow and Catrina L Dicterow

Chapter 11

#1.00 Motion to Reopen Chapter 11 Case

Docket 98

Tentative Ruling:

Tentative for 8/12/20:
Grant.

Party Information

Debtor(s):

Steven M Dicterow

Represented By
J Scott Williams

Joint Debtor(s):

Catrina L Dicterow

Represented By
J Scott Williams

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

Wednesday, August 12, 2020

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#2.00 Application For Compensation For Period: 2/14/2018 to 7/22/2020:

WILLIAM H. BROWNSTEIN, DEBTOR'S ATTORNEY:

FEE: \$643,597.70

EXPENSES: \$15,652.37

Docket 355

Tentative Ruling:

Tentative for 8/12/20:
Allow as prayed.

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
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Wednesday, August 12, 2020

Hearing Room 5B

10:00 AM

8:19-10552 Bruce Reyner

Chapter 11

#3.00 First And Final Application for Allowance and Payment Of Fees and Reimbursement of Chapter 11 Expenses For Period: 2/16/2019 to 7/17/2020,

WEILAND GOLDEN GOODRICH LLP'S, DEBTOR'S ATTORNEY,

FEE: \$125,525.00

EXPENSES: \$3,135.02

Docket 136

Tentative Ruling:

Tentative for 8/12/20:

Allow conditioned on submission of client statement per LBRs.

Party Information

Debtor(s):

Bruce Reyner

Represented By
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 12, 2020

Hearing Room 5B

10:00 AM

8:19-10552 Bruce Reyner

Chapter 11

#4.00 First And Final Fee Application For Allowance And Payment Of Chapter 11 Fees And Reimbursement Of Chapter 11 Expenses For Period: 2/20/2019 to 6/1/2020:

FORCE TEN PARTNERS, LLC FINANCIAL ADVISOR FOR THE DEBTOR:

FEE: \$37,606.50

EXPENSES: \$0.00

Docket 137

Tentative Ruling:

Tentative for 8/12/20:
Allow as prayed conditioned on submission of client statement per LBRs.

Party Information

Debtor(s):

Bruce Reyner

Represented By
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 12, 2020

Hearing Room

5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#5.00 Second Interim Application For Compensation And Reimbursement Of Expenses For Period: 2/16/2020 to 7/6/2020, Fee: \$28,022.00, Expenses: \$650.48.

MICHAEL JAY BERGER, DEBTOR'S ATTORNEY,

FEE:	\$28,022.00
EXPENSES:	\$650.48

Docket 121

Tentative Ruling:

Tentative for 8/12/20:

This is the Second Interim Fee Application of debtor's counsel. Wells Fargo complains that its collateral is not being benefitted by counsel's ongoing efforts and therefore cannot be used to pay fees. Wells Fargo also argues that, measured by cash available, the case is sinking as June's MOR is worse than May's. In the Reply some explanation is offered having to do with counting debits after the end of the month which, when adjusted on an apples to apples basis, shows that results of operations were actually about the same, if very slightly improved. It is also grossly simplistic to argue that Wells' collateral is not benefitted at all by counsel's efforts. That debtor is able to stay in business at all seems to be a benefit to Wells Fargo as it is likely that should business cease a realization by Wells of its full claim would be very doubtful and, of course, no junior creditor would get anything. So, we seem to be more or less in the same place we were four months ago. We all look forward to some improvement in July and August MORs. The deadline to file a plan and disclosure statement looms in about six weeks (and extensions should not be expected). Debtor will be required to show feasibility and the track record looks equivocal so far. But that does not mean the court has given up on the case, and the court understands that without the earnest ongoing efforts of counsel, failure is assured. Zeal for fulfilling counsel's role will be understandably diminished if payment is altogether denied. So, what to

**United States Bankruptcy Court
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Santa Ana
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10:00 AM

CONT... **Talk Venture Group, Inc.**
do?

Chapter 11

The court is inclined to allow the fees as prayed with the requirement that not more than 50% be paid at this time, subject to reconsideration if a healthy cash reserve net of fees can be accumulated or if a plan is confirmed.

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
Courtroom 5B Calendar**

Wednesday, August 12, 2020

Hearing Room

5B

10:00 AM

8:20-11749 Navarrete Investments, LLC

Chapter 11

**#6.00 Motion In Chapter 11 Case For Order Authorizing Use Of Cash Collateral
[11 U.S.C. Section 363]**

Docket 30

Tentative Ruling:

Tentative for 8/12/20:

Secured Creditor's concerns are understandable. The court is unclear as to how Debtor proposes to pay the creditors. The Subject Property has been on the market for more than six months and Secured Creditor asserts that not a single offer has come in. Debtor vaguely states that there are marketing efforts going on, but nothing besides the pandemic to explain why no offers are forthcoming. The Subject Property has also recently converted to a rental property. Does Debtor still plan on selling the Subject Property? If not, vague reference is made to a possible refinance to pay creditors. What would that look like? What is the proposed timeline? The motion does not provide answers to these questions. However, the court is generally supportive of Debtors in possession taking steps to preserve value of collateral, and that appears to be what Debtor intends to do with the cash collateral. Perhaps the better part of valor is to grant the motion on an interim or temporary basis with a status conference scheduled in the near future so that Debtor can put together a proposal for paying Secured Creditor, whether through a sale, a refinance, or some other arrangement. If the court is not satisfied with the arrangement, the motion will be denied.

The argument that there is an ample equity cushion is not persuasive for at least two reasons. First, the valuation comes from the debtor which, of course, is self-serving. While it is true that owners are not disqualified from opining as to the value of assets they own, that does not mean that the court has to give them the same weight as valuations from professional appraisers. Of course, the creditor does not offer a professional appraisal either.

But the second concern arises from the fact that apparently the property has been for sale for six months, without result. This suggests downward adjustments may be in order. In the end the property has to be

**United States Bankruptcy Court
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Santa Ana
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Wednesday, August 12, 2020

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10:00 AM

CONT... Navarrete Investments, LLC

Chapter 11

maintained and managed, or it will not generate any income and will not show well for sale either. Consequently, the court is inclined to grant the motion for a four-month trial basis with the proviso that all rents must be used for property upkeep and management only, with no more than a 10% management fee paid to any insider, including the daughter.

Grant on described basis pending further hearing to November 4, 2020 @ 10:00 a.m..

Party Information

Debtor(s):

Navarrete Investments, LLC

Represented By
Julian K Bach

Movant(s):

Navarrete Investments, LLC

Represented By
Julian K Bach

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

Thursday, August 13, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1607641242>

ZoomGov meeting number: 160 764 1242

Password: 929530

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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

Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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

Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

- NONE LISTED -

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

Thursday, August 13, 2020

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 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 7-23-20)

Docket 1

Tentative Ruling:

Tentative for 8/13/20:
See #2.

Tentative for 7/23/20:
Status?

Tentative for 6/25/20:
See #17.

Tentative for 4/29/20:
Status?

Tentative for 3/26/20:
See # 12-14.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

CONT... Richard Paul Herman

Chapter 7

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
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 13, 2020

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

- #2.00** Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay
(set by Order entered 3-18-20)
(cont'd from 7-23-20)

Docket 113

Tentative Ruling:

Tentative for 8/13/20:

The sanction was doubled at the 7/23 hearing but reportedly nothing has been paid in whole or in part of any portion. Even more grave is the report that the Hermans have filed a motion before the state court for leave to amend the complaint which, although seemingly labelled as confined to negligent destruction of personal property, nevertheless asserts millions in damages for emotional distress and punitive damages, which, as a whole, seems a thinly disguised re-assertion of claims this court has already ruled were owned by the estate and sold by its trustee to Foothill. But, reportedly, the state court has relegated the amendment motion for the limited jurisdiction court to decide. Depending on how that goes it would seem that these proposed amendments may not be allowed, or at least not allowed consistent with the jurisdiction of that court deciding the question, and thus effectively foreclosed. In either case, it would seem that Mr. Herman does not intend to accept this court's decisions. The court is inclined to see whether the amendment is allowed by the limited jurisdiction court before assessing whether yet more sanctions or other measures are warranted.

Tentative for 7/23/20:

New for 7/23: Mr. Herman's objection to order for sanctions and stay of proceedings pending appeal. Mr. Herman argues that he has appealed this court's contempt order, which divests this court of jurisdiction. This objection was filed on 6/26/20.

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Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

CONT... Richard Paul Herman

Chapter 7

The objection is linked to the notice of lodgment of the order requiring Herman to pay \$2,000 as a sanction for his continuing violation of this court's May 11, 2020 contempt order.

Foothill and the Chapter 7 Trustee have filed a joint supplemental report noting Mr. Herman's continuing noncompliance. Per the report, Mr. Herman is continuing his campaign in state court asserting that this wife may make claims beyond that which this court set forth. The state court has apparently issued an OSC re dismissal and a separate OSC regarding the court's proposed transfer of the Surviving Claims to a court of limited jurisdiction (i.e. claims for damages of less than \$25,000). These matters are set for hearing on August 7, 2020. Unsurprisingly, Mr. Herman has also failed to pay the sanction to Foothill as ordered.

Regarding Mr. Herman's assertion that the appeal divests this court of jurisdiction over the contempt order, Foothill cites *Hoffman v. Beer Drivers and Salesmen's Local Union No. 88*, 536 F.2d 1268, 1276 (9th Cir. 1976) for the proposition that, in the context of contempt proceedings like the ones here, "where the court supervises a continuing course of conduct and where as new facts develop additional supervisory action by the court is required, an appeal from the supervisory order does not divest the [court] of jurisdiction to continue its supervision, even though in the course of that supervision the court act upon or modifies the order from which the appeal is taken." Trustee further cites *Hughes v. Sharp*, 476 F.2d 975 (9th Cir. 1973), where the court noted, that when the contemnor is a party to the pending proceedings, and when those proceedings are still under way, the court lacks jurisdiction to consider the purported appeal from a contempt order as that order is interlocutory. The court stated that although this may seem harsh, a contemnor is not without recourse, as among his options is purging his contempt. *Id.* Foothill also notes that the notice of appeal was untimely and that a new appeal cannot be initiated by simply amending the notice of appeal; a new notice of appeal is required.

By contrast, Mr. Herman's objection is completely devoid of analysis and contains only vague citations to cases standing for the broad proposition that an appeal divests the bankruptcy court of jurisdiction over those aspects of

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 13, 2020

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5B

10:00 AM

CONT...

Richard Paul Herman

Chapter 7

the case involved in the appeal. But those cases cited by Mr. Herman do not undercut the cases cited by Foothill. Mr. Herman has not filed anything responsive to Foothill's supplemental report.

The message that the court sent to Mr. Herman at the last hearing on 6/25 was apparently not received, even when Mr. Herman was unambiguously ordered to pay a sanction of \$2,000 to Foothill to put a sharper point on the message. Mr. Herman seems to be operating on the misguided assumption that his appeal puts him out of reach of this court, leaving him free to pursue conduct this court has already characterized as contumacious. However, as the case law cited above demonstrates, the court remains vested with the power to monitor Mr. Herman's ongoing misconduct, and modify the contempt order as necessary.

The court has already noted that Mr. Herman is playing with fire by continuing to ignore this court's orders. It does not appear, however, that Mr. Herman is altering his course. Rather, he persists, relying on legalistic arguments about finality of orders which, as explained above, are not persuasive. But this course is causing real, continuing damages to Foothill. So, the court has little choice but to raise the stakes in hopes of reaching the requisite coercion threshold. The sanction is doubled to \$4,000, payable forthwith to Foothill. The court notes that the Superior Court has now also scheduled this matter on order to show cause for August 7, 2020. A further hearing will be scheduled for a mutually convenient date after August 7 to evaluate where we stand and whether yet more coercion is needed.

Tentative for 6/25/20:

Following the hearing on the OSC re: Contempt on April 29, Foothill Financial and Trustee jointly lodged an order on April 30. The official order issued on May 11. Mr. Herman filed an untimely objection to the lodged order.

To accompany his objection to the lodged order, Mr. Herman attached his own proposed order, which bears little resemblance to the actual ruling on the OSC and several other orders issued by this court.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 13, 2020

Hearing Room

5B

10:00 AM

CONT... Richard Paul Herman

Chapter 7

The most consequential rewrite Mr. Herman makes to his proposed order is where he states that per our abstention order, he is allowed to pursue in state court all claims that may belong solely to his wife with no limit on value. This is despite the many orders issued by this court where the specific claims the court abstained from are listed. Foothill's response catalogues the various orders and judgments with the court's very clear language articulating the narrow scope of its abstention.

Mr. Herman appears to have seized upon the most miniscule ambiguity to deliberately disregard the language and spirit of this court's orders in an attempt to reframe his dismissed claims as belonging solely to his wife, thereby allowing him to re-litigate them in state court. Mr. Herman may have already filed a version of his order with the state court. Foothill and Trustee are understandably dismayed by this latest attempt to hinder and delay.

In light of this most recent and fairly egregious transgression, Foothill requests that the court now impose monetary sanctions. Foothill suggests that Mr. Herman should pay the fees incurred by Foothill as a result of Mr. Herman's ongoing contempt, which Foothill estimates in its status report at \$7,500.

Mr. Herman has filed his own status report asserting that the contempt order is on appeal and there is nothing else to be adjudicated by this court at this time, all matters now being with the district court.

Mr. Herman is playing with fire. Rather than displaying even a modicum of compunction after being adjudged to be in contempt, Mr. Herman asserts in his objection that his contempt is now purged, and that it never truly existed in the first place. Mr. Herman, we should not forget, is also an attorney, and is presumed to be able to understand court orders and the consequences for disregarding them. Thus, a measured and modest monetary sanction is likely appropriate, with the promise of more severe sanctions to follow if Mr. Herman continues to misconduct himself.

The court requests an update on whether Mr. Herman actually lodged a bogus form of order with the state court. Impose monetary sanctions of \$2000 payable jointly to Foothill and Trustee.

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

Thursday, August 13, 2020

Hearing Room

5B

10:00 AM

CONT...

Richard Paul Herman

Chapter 7

Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

(a) Why he should not be held in contempt for

- i. his continuing efforts to exercise control over and interfere with the dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and
- ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.

(b) Why he should not be subjected to the following sanctions:

- i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and
- ii. Compensatory damages incurred by Foothill and the Trustee as a result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

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10:00 AM

CONT... Richard Paul Herman

Chapter 7

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely responses.

Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the

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Thursday, August 13, 2020

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5B

10:00 AM

CONT... Richard Paul Herman

Chapter 7

Trustee has sought damages under 11 U.S.C. § 362(k), but rather this proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted). Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2)

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10:00 AM

CONT... Richard Paul Herman

Chapter 7

affirming to the State Court that the only cause of action that the Hermans assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "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) Debtor's "claim 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."

2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

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Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

CONT... Richard Paul Herman

Chapter 7

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

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
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Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

8:18-14617 Donald M Larzelere

Chapter 7

Adv#: 8:19-01059 Collect Co. v. Larzelere et al

#2.10 CONT STATUS CONFERENCE RE: Complaint objecting to discharge of debts

[fr: 6/25/19, 9/24/19, 12/3/19, 2/25/20, 3/3/20, 4/7/20, 6/2/20]

Docket 1

Tentative Ruling:

Tentative for 8/13/20:
Status of payments per stipulation?

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Donald M Larzelere

Represented By
Dale F Hardeman

Defendant(s):

Donald M Larzelere

Pro Se

Bridget R Larzelere

Pro Se

Joint Debtor(s):

Bridget R Larzelere

Represented By
Dale F Hardeman

Plaintiff(s):

Collect Co.

Represented By
Marc Y Lazo

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Judge Theodor Albert, Presiding
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Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

CONT... Donald M Larzelere

Chapter 7

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2), 523(a)(4), and 523(a)(6)

Docket 1

Tentative Ruling:

Tentative for 8/13/20:
Why no status report?

Party Information

Debtor(s):

Scott A. Tucker

Represented By
Thomas J Polis

Defendant(s):

Scott Tucker

Pro Se

Plaintiff(s):

Scott Churilla

Represented By
Stephanie N West

Trustee(s):

Richard A Marshack (TR)

Pro Se

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Judge Theodor Albert, Presiding
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Thursday, August 13, 2020

Hearing Room 5B

10:00 AM

8:19-11359 Ronald E. Ready

Chapter 13

Adv#: 8:19-01152 Waters v. Ready

#4.00 PRE-TRIAL 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)
(set from s/c hrg held on 12-12-19)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - PER ORDER
DISMISSING ADVERSARY PROCEEDING PURSUANT TO
STIPULATION OF PARTIES ENTERED 8-11-20**

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.

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
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Thursday, August 13, 2020

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01041 Marshack v. West Coast Business Capital LLC et al

#5.00 Defendant's West Coast Business Capital, LLC's Motion To Dismiss 12(b)(1)(6) (cont'd from 7-23-20 per order approving stip. to cont. motion to dismiss entered 7-02-20) (re-scheduled from 7-23-20 at 11:00 a.m. per court order)

Docket 27

***** VACATED *** REASON: CONTINUED TO 9-03-20 AT 11:00 A.M.
PER ORDER APPROVING THIRD STIPULATION BETWEEN
PLAINTIFF AND DEFENDANT WEST COAST BUSINESS CAPITAL,
LLC TO CONTINUE HEARING ON MOTION TO DISMISS ENTERED 7-
30-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Represented By
Michael W Davis

Vernon Capital Group LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Thursday, August 13, 2020

Hearing Room 5B

2:00 PM

8:11-22626 Son Ba Mai

Chapter 7

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#6.00 PRE-TRIAL CONFERENCE RE: Petition For Removal (28 U.S.C.Section 1452, 1334)
(cont'd from 7-02-02)**

Docket 1

Tentative Ruling:

Tentative for 8/13/20:
See #7.

Tentative for 7/2/20:
Continue to coincide with MSJ August 13 @ 2 p.m.

Tentative for 8/29/19:
See #22

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.

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2:00 PM

CONT...

Son Ba Mai

Chapter 7

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 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).

Party Information

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

**United States Bankruptcy Court
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2:00 PM

CONT... Son Ba Mai

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, August 13, 2020

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2:00 PM

8:11-22626 Son Ba Mai

Chapter 7

Adv#: 8:19-01019 Daniel Cham MD v. Mai

**#7.00 Defendant's Motion For Summary Judgment
(cont'd from 7-23-20)**

Docket 63

Tentative Ruling:

Tentative for 8/13/20:

Grant. The motion is unopposed. Also, the late filing and failure to respond to discovery all fortify the conclusion that the motion should be granted. Appearance is not required. Movant to submit order.

Tentative for 7/23/20:

Per Movant's Notice of Rescheduled Hearing filed 6/16, the hearing is rescheduled to August 13, 2020 at 2:00PM. Appearance is not required.

Party Information

Debtor(s):

Son Ba Mai

Represented By
Christina M Chan
Christopher L Blank

Defendant(s):

Son Mai

Represented By
Christopher L Blank
Erwin Adler

Plaintiff(s):

Daniel Cham MD

Represented By
Christopher L Blank

**United States Bankruptcy Court
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2:00 PM

CONT... Son Ba Mai

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 18, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1606810477>

ZoomGov meeting number: 160 681 0477

Password: 467291

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
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10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Tuesday, August 18, 2020

Hearing Room 5B

10:00 AM

8:17-12233 Robert Francis Delsasso

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

DAIMLER TRUST

Vs

DEBTOR; AND SUSAN GUIMBAL DELSASSO, NON-FILING CO-DEBTOR

Docket 61

Tentative Ruling:

Tentative for 8/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Robert Francis Delsasso

Represented By
D Justin Harelik

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 18, 2020

Hearing Room 5B

10:00 AM

8:20-11999 Gerardo Ceballos and Christie Lynn Ceballos

Chapter 7

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY
[2012 Volkswagen Passat]**

**PARTNERS FEDERAL CREDIT UNION
Vs.
DEBTORS**

Docket 9

Tentative Ruling:

Tentative for 8/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Gerardo Ceballos

Represented By
Kevin Tang

Joint Debtor(s):

Christie Lynn Ceballos

Represented By
Kevin Tang

Movant(s):

Partners Federal Credit Union

Represented By
Yuri Voronin

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:20-11999 Gerardo Ceballos and Christie Lynn Ceballos

Chapter 7

**#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY
[2013 Volkswagen CC]**

**PARTNERS FEDERAL CREDIT UNION
Vs.
DEBTOR**

Docket 10

Tentative Ruling:

Tentative for 8/18/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Gerardo Ceballos

Represented By
Kevin Tang

Joint Debtor(s):

Christie Lynn Ceballos

Represented By
Kevin Tang

Movant(s):

Partners Federal Credit Union

Represented By
Yuri Voronin

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 18, 2020

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5B

10:00 AM

8:17-11524 Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-21-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 55

Tentative Ruling:

Tentative for 8/18/20:
Status? Grant absent APO. Appearance is optional.

Tentative for 7/21/20:
Grant absent APO. Appearance is optional.

Tentative for 6/23/20:
Same as before, grant. Appearance is optional.

Tentative for 4/29/20:
Grant, absent a stipulation. Debtors are not privileged to default on confirmed plans in the hope that they can get further concessions, and so, the mere unanswered request for a stipulation, even if true, is not a basis for denying the motion.

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Hearing Room 5B

10:00 AM

CONT... Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

Party Information

Debtor(s):

Cheryl A. McCoy

Represented By
Anerio V Altman

Joint Debtor(s):

Bryan Anthony McCoy

Represented By
Anerio V Altman

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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5B

10:00 AM

8:17-14950 Kellie J Richardson-Ford

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 7-21-20 per order on stip. to cont hrg. ent. 7-8-20)**

TOWD POINT MORTGAGE TRUST 2019-3, U.S. BANK NATIONAL
ASSOCIATION
Vs.
DEBTOR

Docket 54

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
STAY ENTERED 7-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kellie J Richardson-Ford

Represented By
Andy C Warshaw

Movant(s):

Towd Point Mortgage Trust 2019-3,

Represented By
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
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Tuesday, August 18, 2020

Hearing Room

5B

10:00 AM

8:18-10215 Isabel Garcia Rainey

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 7-21-20 per order granting stip. cont.hrg re: mtn entered
7-21-20)

CITIMORTGAGE, INC.
Vs.
DEBTOR

Docket 50

***** VACATED *** REASON: CONTINUED TO 9-15-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE HEARING ON
MOTION FOR RELIEF FROM AUTOMATIC STAY ENTERED 8-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isabel Garcia Rainey

Represented By
Craig J Beauchamp

Movant(s):

CitiMortgage, Inc.

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
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Tuesday, August 18, 2020

Hearing Room 5B

10:00 AM

8:18-13486 Jesus Gabriel Vargas

Chapter 13

**#7.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-14-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR**

Docket 65

Tentative Ruling:

Tentative for 8/18/20:
Status? Grant absent APO. Appearance is optional.

Tentative for 7/14/20:
Grant absent APO stipulation or loan current post confirmation.

Party Information

Debtor(s):

Jesus Gabriel Vargas

Represented By
Lisa F Collins-Williams

Movant(s):

U.S. Bank National Association, not

Represented By
Sean C Ferry
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, August 18, 2020

Hearing Room 5B

10:00 AM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

**#8.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-14-20)**

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTORS**

Docket 69

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STALY UNDER 11 USC SECTION 362 ENTERED 8-04
-20**

Tentative Ruling:

Tentative for 7/14/20:

Grant absent stipulated APO or loan current post confirmation.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Victor Arreola

Represented By
Christopher J Langley

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

Tuesday, August 18, 2020

Hearing Room 5B

10:00 AM

CONT... Victor Arreola and Cindy Morelos Arreola

Chapter 13

Joint Debtor(s):

Cindy Morelos Arreola

Represented By
Christopher J Langley

Movant(s):

Deutsche Bank National Trust

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, August 18, 2020

Hearing Room

5B

10:00 AM

8:20-10930 Roger Boose

Chapter 13

#9.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR

Docket 28

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 8-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roger Boose

Represented By
Gary Polston

Movant(s):

U.S. Bank, National Association as

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, August 19, 2020

Hearing Room

5B

1:30 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 7-15-20)**

Docket 48

Tentative Ruling:

Tentative for 8/19/20:

The Trustee's request for an order resetting bar date for exemption objections does not seem grounded in any authority, and therefore is denied. But other issues may remain, as listed by the Trustee:

Chapter 13 Trustee's Notes:

- 1) Need updated declaration re secured payments filed.
- 2) No provision for OC property tax claims filed. Objection filed, hearing 8/19.
- 3) need 2019 tax returns.
- 4) No provision for proof of claim #1, 2017 Ford Explorer.
- 5) Trustee requesting that schedule C objection dates and property valuation waived if case is converted back to chapter 7.

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Tentative for 6/17/20:

This has been continued for a considerable period but progress seems

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Wednesday, August 19, 2020

Hearing Room

5B

1:30 PM

CONT... Charles Ragan Peyton, III

Chapter 13

minimal or nonexistent. Nothing was filed by debtor as of 6/11, yet the Trustee's specific points appear to be left unaddressed. Convert to Chapter 7?

Tentative for 4/15/20:

Debtor may have presented enough (barely) to overcome the "regular income" question, but the Trustee's other points remain to be addressed; (1) what about the 3d TD Diversified (2) Ford lease (3) evidence on monthly expenses and reasonableness of same (4) evidence of residence value for best interest of creditors question.

Tentative for 2/19/20:
See #51

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Movant(s):

Charles Ragan Peyton III

Represented By
Richard G Heston
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, August 19, 2020

Hearing Room 5B

1:30 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

**#2.00 Confirmation of Chapter 13 Plan
(cont'd from 7-15-20)**

Docket 10

***** VACATED *** REASON: OFF CALENDAR - NOTICE THAT THE
CASE HAS BEEN CONVERTED TO CHAPTER 7 FROM CHAPTER 13
ENTERED 8-18-20**

Tentative Ruling:

Tentative for 2/19/20:

Status on missing payments, 341(a) business budget, etc.?

Party Information

Debtor(s):

Ashley Dawn Conrad

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, August 19, 2020

Hearing Room 5B

1:30 PM

8:19-14518 Ashley Dawn Conrad

Chapter 13

#3.00 Creditor's Motion For Order Approving: (1) Settlement Agreement With Debtor Ashley Dawn Conrad; And (2) Approving Form Of Settlement Agreement **(cont'd from 7-15-20)**

Docket 57

***** VACATED *** REASON: CONTINUED TO 9-01-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION RE: CREDITOR'S MOTION
FOR ORDER APPROVING SETTLEMENT ENTERED 8-18-20**

Tentative Ruling:

Tentative for 7/15/20:

Creditor Al Hassas/Sweet Lemons, LLC ("Creditor") moves for an order approving a Settlement Agreement between Creditor and Debtor in the voluntary chapter 13 case. The approval of this motion would result in the dismissal of the Debtor's chapter 13 bankruptcy. Trustee filed an opposition on 6/25/20. Trustee argues that the Settlement Agreement, if approved, should not involve dismissal of the chapter 13 and all payments should be disbursed by the Trustee. Additionally, Trustee requests the Creditor amend their proof-of-claim in accordance with the agreement and Debtor amend the plan to establish the appropriate class or subclass for treatment of the creditor in accordance with the agreement.

On 7/1/2020, Debtor filed a reply to the opposition. She argues the conditions requested by the Trustee would only result in a default on the Settlement Agreement. The agreement states a third-party has agreed to pay the monthly payment straight to the Creditor. Debtor argues if the payments must go through the Trustee for distribution to the Creditor there is too much room for error and the possibility of default is much higher, thus, putting a greater burden on the Debtor. Additionally, Debtor argues if the payments are made to the Trustee this would structurally alter the terms of the agreement

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

Wednesday, August 19, 2020

Hearing Room 5B

1:30 PM

CONT... Ashley Dawn Conrad

Chapter 13

and since the payments go beyond the five-year term of the bankruptcy plan, the Trustee could not fully satisfy the entirety of the agreement transitioning it into default.

Creditor and Debtor filed replies to the Trustee's opposition arguing that the *Jevic*-like settlement in contrast does not violate the priority scheme set forth in the Bankruptcy Code. See *Czyzewski v. Jevic Holding Corp.* 137 S. Ct. 973, 979 (2017). Additionally, they argue settlement would allow for the Debtor to begin a "fresh start" moving forward after dismissal. Finally, Creditor argues every prong in the four-prong fair classification test found in *In re Benner*, 146 B.R. 265, 266 (D. Montana 1992) has been satisfied. But *Benner* is a separate classification case, not a dismissal case.

Under 11 U.S.C § 105, the court holds the power over the case to approve, dismiss, or deny the motion to approve Settlement Agreement. Here, the motion falls within the scope of § 105 and the court holds power over this action. FRBP 9019 allows for the compromise or settlement of claims and controversies by the Creditor, Debtor, and Trustee following notice and a hearing. In order for the court to approve a proposed settlement the court should consider the following factors, as discussed in *In re Woodson*: 839 F.2d 610,620 (9th Cir. 1988), citing *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir.), *cert. denied sub nom. Martin v. Robinson*, --- U.S. ----, 107 S. Ct. 189, 93 L. Ed. 2d 122 (1986).

"(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises."

Here, (a) the probability of success in the Creditor's allegedly nondischargeable claim against the Debtor should be regarded as high. This would further burden the Debtor and have the likelihood of never creating an effective reorganization plan; (b) the agreement between the parties has

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CONT... Ashley Dawn Conrad

Chapter 13

taken place over that last several months with a full merger clause and understanding of each parties' obligations. The Debtor has secured a third-party, who has agreed to the terms and will satisfy all the required payments. (c) The complexity of the situation is straightforward enough. Debtor lost a civil suit to the Creditor who holds the majority debt against the Debtor. The cost of litigation would significantly decrease the total amount in the estate, diminishing the ability to pay not only the Creditor as agreed but any remaining unsecured claims.

But the main issue arises under the last *Woodson* factor: "the paramount interest of the creditors . . ." that is *creditors*, plural. The agreement is solely between the Debtor and one Creditor. It fails to take into consideration or even discuss any other creditors who must be treated within the reorganization plan. Understandably, Creditor holds almost 90% of the total debt, but all other creditors must also be considered when approving such a motion, particularly one involving a dismissal. Approving the Settlement Agreement should be a compromise which is "fair and equitable" to *all parties involved*. (italics added) *In re A & C Properties*, 784 F.2d at 1381. The agreement focuses solely on questions of Creditor's and Debtor's concerns but fails to consider at all any other creditors.

The court is not indifferent to the Debtor's fresh start nor to her difficulty in handling a non-dischargeable obligation, nor is the court indifferent to the administrative cost savings to the reorganization effort. All are good points, but the movants fail to convince that these points cannot be handled within the context of a Chapter 13 plan. The fact that payments might continue past the five years is hardly an insuperable impediment. The plan can acknowledge the non-dischargeable nature of the obligation and acknowledge that at the end of term the payments will have to go on since the discharge otherwise generally applicable under the plan will not affect this obligation. The Trustee need not be involved after the end of the term. So, no good reason is given to abandon all other creditors in order to further the

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CONT... Ashley Dawn Conrad
convenience of just two parties.

Chapter 13

Deny as requested. Suggest continuance for re-draft.

Party Information

Debtor(s):

Ashley Dawn Conrad

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, August 19, 2020

Hearing Room 5B

1:30 PM

8:19-14637 Shane Alan Magness

Chapter 13

#4.00 Confirmation of Chapter 13 Plan
(cont'd from 7-15-20)

Docket 11

Tentative Ruling:

Tentative for 8/19/20:
Has amended plan resolved objection?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
Response to creditor objections is needed.

Party Information

Debtor(s):

Shane Alan Magness

Represented By
Hasmik Jasmine Papian

Movant(s):

Shane Alan Magness

Represented By
Hasmik Jasmine Papian

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, August 19, 2020

Hearing Room 5B

1:30 PM

CONT... Shane Alan Magness

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, August 19, 2020

Hearing Room 5B

1:30 PM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

**#5.00 Confirmation of Chapter 13 Plan
(cont'd from 7-15-20)**

Docket 14

Tentative Ruling:

Tentative for 8/19/20:
Status unclear, based on Trustee's comments.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

Aureliano Gonzalez

Represented By
Elena Steers

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

Wednesday, August 19, 2020

Hearing Room 5B

1:30 PM

CONT... Aureliano Gonzalez and Juana Artega De Gonzalez
Juana Artega De Gonzalez
Represented By
Elena Steers
Elena Steers

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 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

8:20-10181 Marco Brito

Chapter 13

#6.00 Confirmation of Chapter 13 Plan
(cont'd from 7-15-20)

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

How does debtor answer the Trustee's objections and that of secured creditors?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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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, August 19, 2020

Hearing Room 5B

1:30 PM

8:20-10464 Rosa Elena Melgar Dominguez

Chapter 13

**#7.00 Confirmation Of Chapter 13 Plan
(cont'd from 7-15-20)**

Docket 14

Tentative Ruling:

Tentative for 8/19/20:
Debtor needs to respond to Trustee's comments.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Rosa Elena Melgar Dominguez

Represented By
Richard L. Sturdevant

Movant(s):

Rosa Elena Melgar Dominguez

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 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

8:20-10493 Terry Gonzalez

Chapter 13

**#8.00 Confirmation of Chapter 13 Plan
(cont'd from 7-15-20)**

Docket 17

Tentative Ruling:

Tentative for 8/19/20:
Response to Trustee's comments?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:

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**United States Bankruptcy Court
Central District of California
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Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

CONT...

Terry Gonzalez

Chapter 13

to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/20/20:

The objections of the Trustee and secured creditor are well-taken. There appear to be feasibility questions, and at the very least the amount of arrearages must be correctly observed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

CONT... Terry Gonzalez

Chapter 13

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

8:20-11069 Keith Alan Miles and Jennifer Ann Miles

Chapter 13

**#9.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-17-20)**

Docket 2

Tentative Ruling:

Tentative for 8/19/20:
Response to Trustee's comments?

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Tentative for 7/15/20:

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Please be advised that CourtCall has announced reduced fees for attorneys

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

CONT... Keith Alan Miles and Jennifer Ann Miles Chapter 13
to use CourtCall and free access for parties who do not have an attorney –
pro se or self-represented litigants through August 31, 2020.

Tentative for 6/17/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Keith Alan Miles

Represented By
Christopher J Langley

Joint Debtor(s):

Jennifer Ann Miles

Represented By
Christopher J Langley

Movant(s):

Keith Alan Miles

Represented By
Christopher J Langley

Jennifer Ann Miles

Represented By
Christopher J Langley

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, August 19, 2020

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1:30 PM

CONT... Keith Alan Miles and Jennifer Ann Miles

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

8:20-11571 Amparo Ulloa

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

Docket 13

Tentative Ruling:

Tentative for 8/19/20:

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Party Information

Debtor(s):

Amparo Ulloa

Represented By
Matthew D. Resnik

Movant(s):

Amparo Ulloa

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, August 19, 2020

Hearing Room 5B

1:30 PM

8:20-11572 Jonathan E McGee and Amy McGee

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Jonathan E McGee

Represented By
Julie J Villalobos

Joint Debtor(s):

Amy McGee

Represented By
Julie J Villalobos

Movant(s):

Jonathan E McGee

Represented By
Julie J Villalobos

Amy McGee

Represented By
Julie J Villalobos

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

Wednesday, August 19, 2020

Hearing Room 5B

1:30 PM

CONT... Jonathan E McGee and Amy McGee

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, August 19, 2020

Hearing Room 5B

1:30 PM

8:20-11689 Christine Cobian Colchado

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Christine Cobian Colchado

Represented By
Christopher J Langley

Movant(s):

Christine Cobian Colchado

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 19, 2020

Hearing Room 5B

1:30 PM

8:20-11691 Ruth E. Argueta

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Ruth E. Argueta

Represented By
George C Panagiotou

Movant(s):

Ruth E. Argueta

Represented By
George C Panagiotou

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 19, 2020

Hearing Room 5B

1:30 PM

8:20-11692 Shannon Michelle Palucci

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Shannon Michelle Palucci

Represented By
Michael E Clark

Movant(s):

Shannon Michelle Palucci

Represented By
Michael E Clark
Michael E Clark

Trustee(s):

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 19, 2020

Hearing Room

5B

1:30 PM

8:20-11698 Daryanaz Mostajabdaveh

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Party Information

Debtor(s):

Daryanaz Mostajabdaveh

Represented By
William Huestis

Movant(s):

Daryanaz Mostajabdaveh

Represented By
William Huestis

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

8:20-11802 Mary Vermiglio Whitney and Jack Douglas Whitney

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

The attempt to bifurcate the Kaitz claim via the plan is both substantively and procedurally inappropriate. A valuation hearing under §506 is required, and if the collateral is debtors' residence, it may not be appropriate under §1322(b) (2) in any event. Deny absent better explanation.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Mary Vermiglio Whitney

Represented By
Chris T Nguyen

Joint Debtor(s):

Jack Douglas Whitney

Represented By
Chris T Nguyen

Movant(s):

Mary Vermiglio Whitney

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, August 19, 2020

Hearing Room 1675

1:30 PM

CONT...

Mary Vermiglio Whitney and Jack Douglas Whitney

Chapter 13

Chris T Nguyen

Chris T Nguyen

Chris T Nguyen

Jack Douglas Whitney

Represented By

Chris T 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, August 19, 2020

Hearing Room 5B

1:30 PM

8:20-11803 Khalid Sayed Ibrahim

Chapter 13

#16.10 Confirmation Of Amended Chapter 13 Plan

Docket 17

Tentative Ruling:

Tentative for 8/19/20:
Debtor needs to respond to Trustee's comments.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

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 19, 2020

Hearing Room 5B

1:30 PM

8:20-11862 Hillary Sue Garwin

Chapter 13

#17.00 Confirmation Of Chapter 13 Plan

Docket 7

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Hillary Sue Garwin

Represented By
Maria C Hehr

Movant(s):

Hillary Sue Garwin

Represented By
Maria C Hehr

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

8:15-13438 Salvador Manuel Robledo

Chapter 13

**#18.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding
(cont'd from 7-15-20)**

Docket 113

Tentative Ruling:

Tentative for 8/19/20:
Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 7/15/20:
Grant. Appearance is optional.

Tentative for 6/17/20:
Grant unless current. Appearance is optional.

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Salvador Manuel Robledo

Chapter 13

Tentative for 4/15/20:
Grant unless current. Appearance is optional.

Tentative for 3/18/20:
Grant absent explanation or modification motion on file if otherwise current.

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, August 19, 2020

Hearing Room 5B

3:00 PM

8:15-13752 Laura Diaz

Chapter 13

#19.00 Trustee's Verified Motion to Dismiss Case Due to Material Default of a Plan Provision
(cont'd from 5-20-20)

Docket 63

Tentative Ruling:

Tentative for 8/19/20:
Grant.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 5/20/20:
Same. Grant unless current. Appearance is optional.

Tentative for 3/18/20:
Grant unless current.

Party Information

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Laura Diaz

Chapter 13

Debtor(s):

Laura Diaz

Represented By
Rebecca Tomilowitz

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, August 19, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

#20.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments
(cont'd from 7-15-20)

Docket 74

Tentative Ruling:

Tentative for 8/19/20:
See #21.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
See #22.

Tentative for 6/17/20:
There was an issue about getting the modification motion on for hearing?
Status?

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Timothy Dale Cox and Diane Gloria Cox

Chapter 13

Tentative for 5/20/20:
See modification motion.

Tentative for 4/15/20:
Continue to coincide with hearing on the modification motion filed April 2.
Appearance is optional.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

Trustee(s):

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 19, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

#21.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan or Suspend Plan Payments
(cont'd from 7-15-20)

Docket 85

Tentative Ruling:

Tentative for 8/19/20:
Status? Will debtors try for CARES Act treatment?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
The debtor should respond to the Trustee's question. Is extension under CARES Act a feasible solution?

Tentative for 6/17/20:

Trustee questions whether the loss in income is attributable to the COVID19 pandemic, in which case an extension is suggested per the CARES Act. However, debtor seems to be arguing something different, i.e. loss of a

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Timothy Dale Cox and Diane Gloria Cox Chapter 13
contractor's license. More information on this question is requested. No tentative.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

Trustee(s):

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 19, 2020

Hearing Room 5B

3:00 PM

8:18-10860 Jose Navarro

Chapter 13

#22.00 Verified Motion For Order Dismissing Chapter 13 Proceeding (11 U.S.C. Section 1307(c) for failure to make plan payments.
(cont'd from 7-15-20)

Docket 86

Tentative Ruling:

Tentative for 8/19/20:

Is this resolved by modification granted by order enter 8/10?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:

Grant. Appearance is optional.

Tentative for 6/17/20:

Grant unless current or modification motion on file. Appearance is optional.

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Jose Navarro

Chapter 13

Tentative for 4/15/20:
Grant unless current or modification motion on file. Appearance is optional.

Tentative for 3/18/20:
Grant unless current or modification motion on file.

Party Information

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, August 19, 2020

Hearing Room 5B

3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

**#23.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 6-17-20)**

Docket 58

Tentative Ruling:

Tentative for 8/19/20:
See #24.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
Grant unless current, but see #25.1.

Tentative for 6/17/20:
Continue to coincide with modification hearing. Appearance is optional.

Tentative for 5/20/20:

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Lazaro Madrid Manzo
Grant unless current. Appearance is optional.

Chapter 13

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**

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

8:18-13283 Lazaro Madrid Manzo

Chapter 13

#24.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments
(cont'd from 7-15-20)

Docket 76

Tentative Ruling:

Tentative for 8/19/20:
Does the order entered 7/16 moot this?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
The amended motion still does not address Trustee's points. Deny unless adequate response to all of the Trustee's points.

Party Information

Debtor(s):

Lazaro Madrid Manzo

Represented By
David R Chase

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Lazaro Madrid Manzo

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, August 19, 2020

Hearing Room 5B

3:00 PM

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

Chapter 13

**#25.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 7-15-20)**

Docket 65

Tentative Ruling:

Tentative for 8/19/20:
Grant unless current or modification motion on file.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
Same. Appearance is optional.

Tentative for 6/17/20:
Grant unless completely current. Appearance is optional.

Tentative for 4/15/20:
Grant unless current or modification motion on file. Appearance is optional.

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Chales Drew Simpson and June P Simpson

Chapter 13

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, August 19, 2020

Hearing Room 5B

3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#26.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C.-1307(c)) (failure to make plan payments)
(cont'd from 7-15-20)

Docket 32

Tentative Ruling:

Tentative for 8/19/20:
Is this resolved by the modification ordered 7/16?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
Grant since opportunity to come current or file a modification motion was apparently not taken. Appearance is optional.

Tentative for 4/15/20:
Grant unless current or modification on file. Appearance is optional.

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Annelize Ladage

Chapter 13

Tentative for 3/18/20:
Same, status?

Tentative for 2/19/20:
Same.

Tentative for 1/15/20:
Grant unless current or motion on file.

Party Information

Debtor(s):

Annelize Ladage

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, August 19, 2020

Hearing Room 5B

3:00 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

#27.00 Objection to Claim of County of Orange - Claim # 17

Docket 94

Tentative Ruling:

Tentative for 8/19/20:
Sustain.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Charles Ragan Peyton III

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Represented By
Richard G Heston

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#28.00 Confirmation of Chapter 13 Plan
(con't from 7-15-20)

Docket 2

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S
REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 CASE
ENTERED 8-12-20**

Tentative Ruling:

Tentative for 7/15/20:
Status? See #38.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 6/17/20:

Continue one last time to July 15 to coincide with objection to claim scheduled for July 15, 2020 @ 3 p.m. Debtor must be current on the two plan payments overdue. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Diane Weinsheimer

Chapter 13

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/15/20:

Continue to July 15 at 3:00PM to coincide with claim objection hearing.
Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/19/20:
Status?

Tentative for 1/15/20:
Status? See #56.

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

Wednesday, August 19, 2020

Hearing Room 5B

3:00 PM

CONT... Diane Weinsheimer

Chapter 13

Tentative for 11/20/19:
Is resolution of #58 a precondition to confirmation?

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.

Tentative for 8/21/19:
Evidentiary hearing on claim objection is being continued by stipulation?

Tentative for 5/29/19:
Same.

Tentative for 4/17/19:
Is a resolution of claim objection (see #43) necessary before confirmation?

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 19, 2020

Hearing Room

5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#29.00 Evidentiary Hearing On Debtor's Objection To Proof of Claim Of ShellPoint Mortgage Servicing
(cont'd from 7-15-20)

Docket 26

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED - ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED 8-12-20**

Tentative Ruling:

Tentative for 7/15/20:

A tentative was issued back in February of 2019 concluding that there was a need for a follow-up evidentiary hearing. The evidentiary hearing has been continued many times by stipulation. It appears that the last written update on this case came from a stipulation to continue the hearing filed in February of 2020. That stipulation asserted that the parties were close to settling and did not want to incur unnecessary fees and costs. In the months since then, Debtor has parted ways with her attorney and is now proceeding pro se. Thus, where this matter stands at present is anyone's guess.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

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CONT...

Diane Weinsheimer

Chapter 13

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
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Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1601576837>

ZoomGov meeting number: 160 157 6837

Password: 238885

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, September 1, 2020

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10:30 AM

8:18-13236 Chad James Carter and Terah Rose Carter

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**BANK OF THE WEST
Vs
DEBTORS**

Docket 76

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
AUTOMATIC STAY ENTERED 8-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chad James Carter

Represented By
Joseph A Weber
Fritz J Firman
Amelia Puertas-Samara

Joint Debtor(s):

Terah Rose Carter

Represented By
Joseph A Weber
Fritz J Firman

Movant(s):

BANK OF THE WEST

Represented By
Mary Ellmann Tang

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 1, 2020

Hearing Room 5B

10:30 AM

8:17-10327 Brian Floyd

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 40

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY UNDER 11 U.S.C. SECTION 362 ENTERED 8-31
-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Floyd

Represented By
Yelena Gurevich

Movant(s):

Wells Fargo Bank, National

Represented By
Sean C Ferry
Seth Greenhill
Keith Labell

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, September 1, 2020

Hearing Room 5B

10:30 AM

8:17-11524 Cheryl A. McCoy and Bryan Anthony McCoy

Chapter 13

**#2.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 8-18-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 55

Tentative Ruling:

Tentative for 9/1/20:
Grant absent APO.

Tentative for 8/18/20:
Status? Grant absent APO. Appearance is optional.

Tentative for 7/21/20:
Grant absent APO. Appearance is optional.

Tentative for 6/23/20:
Same as before, grant. Appearance is optional.

Tentative for 4/29/20:

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CONT... Cheryl A. McCoy and Bryan Anthony McCoy Chapter 13

Grant, absent a stipulation. Debtors are not privileged to default on confirmed plans in the hope that they can get further concessions, and so, the mere unanswered request for a stipulation, even if true, is not a basis for denying the motion.

Party Information

Debtor(s):

Cheryl A. McCoy

Represented By
Anerio V Altman

Joint Debtor(s):

Bryan Anthony McCoy

Represented By
Anerio V Altman

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, September 1, 2020

Hearing Room 5B

10:30 AM

8:17-11831 Walter Quiroz and Carmen Quiroz

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-07-20)

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 47

***** VACATED *** REASON: OFF CALENDAR - A NOTICE OF
VOLUNTARY DISMISSAL OF A CONTESTED MATTER FILED BY
MOVANT ON 8-21-20**

Tentative Ruling:

Tentative for 7/7/20:
Grant unless or stipulation for APO.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 6/16/20:

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CONT... **Walter Quiroz and Carmen Quiroz**
Grant. Appearance is optional.

Chapter 13

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/6/20:
Same, grant unless APO stipulated. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:
Grant unless and APO is stipulated. Appearance is optional.

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CONT... Walter Quiroz and Carmen Quiroz

Chapter 13

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/25/20:
Grant unless current or APO.

Party Information

Debtor(s):

Walter Quiroz

Represented By
Christopher P Walker

Joint Debtor(s):

Carmen Quiroz

Represented By
Christopher P Walker

Movant(s):

U.S. Bank National Association

Represented By
Sean C Ferry
Eric P Enciso

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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10:30 AM

8:17-13482 Catherine M Haretakis

Chapter 7

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**PACIFIC WESTERN BANK
Vs.
DEBTOR**

Docket 341

Tentative Ruling:

Tentative for 9/1/20:

This relief of stay motion is largely resolved by the fact that there is no longer any property of the estate involved since the trustee has abandoned the subject property by order entered 5/9/19. The court doubts that any bare, continuing "possessory interest" is even something protected by the stay, and even if it were, the stay as to the debtor is resolved once a discharge is entered per §362(c)(2)(C). Lastly, it would appear that the property has no equity and is not necessary to a reorganization within the meaning of §362(d)(2). Grant.

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

Movant(s):

Pacific Western Bank

Represented By
Andrew K Alper
Hal D Goldflam
Kenneth Hennesay

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen

**United States Bankruptcy Court
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10:30 AM

8:19-13186 Angela Huichuan Yu

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**SHADOW CANYON CONDOMINIUM ASSOCIATION
Vs
DEBTOR**

Docket 101

***** VACATED *** REASON: OFF CALENDAR - SHADOW CANYON
CONDOMINIUM ASSOCIATION'S WITHDRAWAL OF MOTION FOR
RELIEF FROM AUTOMATIC STAY FILED 8-13-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angela Huichuan Yu

Represented By
Andrew Moher

Movant(s):

Shadow Canyon Condominium

Represented By
Jeffrey Speights

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:20-11757 Shelley M Spear

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTOR**

Docket 11

Tentative Ruling:

Tentative for 9/1/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Shelley M Spear

Represented By
Sunita N Sood

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By
Sean C Ferry

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 7

#7.00 Motion to Withdraw as Attorney

Docket 566

Tentative Ruling:

Tentative for 9/1/20:
Grant.

Party Information

Debtor(s):

Vitargo Global Sciences, Inc.

Represented By
Michael Jay Berger

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

**United States Bankruptcy Court
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11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#8.00 Chapter 7 Trustee's Motion For Order Authorizing Filing Of Chapter 7 Bankruptcy Cases For Olive Avenue Investors, LLC, And South 7th Street Investments, LLC

Docket 1839

Tentative Ruling:

Tentative for 9/1/20:

This is the chapter 7 trustee, Howard Grobstein's ("Trustee's") motion for order authorizing filing of chapter 7 bankruptcy cases for Olive Avenue Investors, LLC, and South 7th Street Investments, LLC. The motion is opposed by Baseline Medical Holdings, LLC and Mountain Park Health Center (collectively "Arizona Defendants"). Respondents Don Mealing, trustee and all other similarly situated judgment creditors arising out of Orange County Superior Court Case No. 30-2008 00114401 ("Charton Creditors"), and Dynalectric Company ("Dynalectric") also oppose.

1. General Background

As with most motions in this case, the parties are numerous and the facts serpentine. As related by Trustee, Point Center Financial ("Debtor") was in the business of residential and commercial loan origination and servicing. Primarily, Debtor's loan funding was procured from private investors who in some instances received fractionalized interests in deeds of trust securing their investments and in other instances invested in a blind mortgage pool in which they did not receive a direct interest in deeds of trust. Following defaults on the loans, Debtor initiated foreclosure proceedings against the property securing the respective loans, which typically resulted in Debtor being the successful purchaser at the foreclosure auction. As the purchaser,

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Debtor frequently set up limited liability companies to hold title to the property, with itself as manager of the LLC, while its investors' interests under the foreclosed deed of trust were converted to membership interests in the LLC. Debtor's operations yielded income in the form of loan origination, loan servicing, and management fees.

2. Jeffrey Gomberg and TAMCO, LLC

Mr. Gomberg held interests in various Debtor-originated investments as beneficiary to his late parents' estate. In or around early 2014, Mr. Gomberg formed TAMCO, LLC ("TAMCO") for the purpose of obtaining control of and managing the assets owned by entities formed by Debtor. Mr. Gomberg passed away in May 2019, leaving TAMCO without management, and TAMCO is now a defunct entity.

3. Olive Avenue

Olive Avenue Investors, LLC ("Olive Avenue") is a California limited liability company that was formed in 2010 for the purpose of commercial real estate activities related to property located on Olive Avenue, Winchester, Riverside County, CA 92596 (the "Olive Property"). Olive Avenue's operating agreement names Debtor as its sole manager. Under the operating agreement, the manager is entitled to be paid "a management fee from the date of formation of [Olive Avenue] in the amount of 2.50% annually calculated upon the total capitalization value" of \$1,850,000. As of the Petition Date, Debtor was owed \$142,519.69 in management fees. Olive Avenue's operating agreement provides that the manager may be replaced only by a vote of members representing a majority interest in Olive Avenue and the payment of all management fees and expenses then due.

In or around 2016, Mr. Gomberg claimed that he had the right to

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control Olive Avenue based on TAMCO's possession of ballots, proxies, and/or powers of attorney of members holding a majority of the membership interests in Olive Avenue. Trustee disputed Mr. Gomberg's claim on the basis that TAMCO had failed to obtain relief from the automatic stay before attempting to exercise control over property of the Estate (Debtor's management rights) and, in any event, a vote to replace Debtor as manager would be ineffective under Olive Avenue's operating agreement until Debtor's management fees were paid in full. However, Trustee determined that it would be more beneficial for the estate to receive payment from the sale of the Olive Property Mr. Gomberg had negotiated than to litigate with TAMCO over control of Olive Avenue and subsequently conduct a new sale process. Accordingly, the Trustee entered into a settlement agreement with TAMCO under which TAMCO would become the manager of Olive Avenue, complete the sale of the Olive Property, and pay the Estate at least \$100,000 from the sale proceeds on account of Debtor's management fee claim. The Trustee sought and obtained this Court's approval of that settlement. Docket Nos. 1655 & 1675. However, Mr. Gomberg passed away before the settlement could be effectuated. In this motion Trustee seems to be proceeding on the presumption that the estate is still the manager as opposed to simply a money creditor, notwithstanding the approved settlement. The court does not reach that question.

4. South 7th

South 7th Street Investments, LLC ("South 7th") is one of the LLCs established by Debtor to hold title to a property following foreclosure. Specifically, South 7th was formed in or about November 2008 for the purpose of taking title to undeveloped land located at 7630 South 7th Street, Phoenix, Arizona 85042 (the "South 7th Property"). South 7th's operating agreement names Debtor as its sole manager and provides for the payment of management fees to Debtor. As of the Petition Date, Debtor was owed

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Chapter 7

approximately \$368,000 in management fees.

TAMCO purported to assume control of South 7th in November 2016 based on an alleged vote of a majority of the interests in South 7th in favor of TAMCO replacing Debtor as South 7th's manager. See Adv. No. 8:16-01089-TA, Docket No. 179. As with Olive Avenue, however, TAMCO allegedly failed to obtain relief from the automatic stay or pay any of the management fees owed to the Estate.

In or around May 2017, TAMCO purported to cause the sale of the South 7th Property to Mountain Park Health Center, a private hospital in Arizona. The grant deed was signed by Mr. Rodney L. Tucker as the "Executive Vice President/CFO" of "TAMCO II, Inc." Trustee asserts that since TAMCO II, Inc., is not the same entity that purportedly was voted in as the manager of South 7th, the deed would be invalid even if TAMCO had actually replaced Debtor as the manager of South 7th (which it arguably did not, due to its failure to comply with the operating agreement and to obtain relief from the automatic stay). In January 2019, the Trustee filed a complaint in the Superior Court for the State of Arizona, County of Maricopa #CV 2019-000849 (the "Arizona Court" or "Arizona action") on behalf of South 7th and the Debtor's estate. The complaint seeks to recover the South 7th Property and quiet title in South 7th's name, and also seeks declaratory and injunctive relief identifying the Trustee as the sole party authorized to act on behalf of South 7th. In May 2019, the Arizona Court ruled that the Trustee lacked standing to pursue the action on behalf of South 7th due to the deemed rejection of South 7th's operating agreement and ordered the case dismissed.

5. Trustee's Main Argument

Trustee does not dispute that it rejected the Operating Agreements, but argues that the Arizona Court's ruling was erroneous, not least because it

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conflicts with recent Supreme Court precedent regarding the effect of rejection. See *Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1656-62 (2019) ("A rejection breaches a contract but does not rescind it. And that means that all the rights that would ordinarily survive a contract breach . . . remain in place. . . . A rejection does not terminate the contract. When it occurs, the debtor and counterparty do not go back to their pre-contract positions."). However, Trustee asserts that challenging the Arizona Court's ruling would be expensive and time-consuming, and Trustee proposes that it is more efficient to resolve the standing issue with his approach of simply being authorized to file chapter 7 petitions on behalf of Olive Avenue and South 7th. Trustee asserts that his position is supported by § 363(b)(1), which states in relevant part, "[t]he trustee . . . may use, sell, or lease, other than in the ordinary course of business, property of the estate." Furthermore, Trustee asserts that for the court to approve a use of estate assets outside of the ordinary course of business, the trustee must provide an "articulated business justification" for the proposed use. See, e.g., *In re ASARCO, LLC*, 650 F.3d 593, 601 (5th Cir. 2011); *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988). Moreover, under 11 U.S.C. § 105(a), "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. See also *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 874 (9th Cir. 2005) ("[T]he bankruptcy court may use its inherent equitable power to fashion relief, as long as the remedy is consistent with the objectives of the Bankruptcy Code."). Trustee argues that this motion is consistent with the objectives of the bankruptcy code because it will save litigation expenses and potentially lead to recoveries for the Debtor.

6. The Opposition

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Arizona Defendants assert that this motion is barred as it represents a textbook application of the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine is a well-established jurisdictional rule prohibiting federal courts from exercising appellate review over final state court judgments. See *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007). The *Rooker-Feldman* doctrine bars suits "[b]rought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Lance v. Dennis*, 546 U.S. 459, 464 (2006) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). "A suit brought in federal district court is a 'de facto appeal' forbidden by *Rooker-Feldman* when 'a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court and seeks relief from a state court judgment based on that decision.'" *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010) (citation omitted). If a lawsuit contains a *de facto* appeal, a federal court is barred from deciding not only the issues decided by the state court, but also any other issues that are "inextricably intertwined" with the state court's decision. See *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003). "A claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it, or if the relief requested in the federal action would effectively reverse the state court decision or void its ruling." *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002).

The Arizona Defendants argue that Trustee through this motion is pursuing a horizontal appeal of the Arizona State Court judgment, advancing essentially the same arguments that the Arizona State Court found unpersuasive, including Trustee's citation to *Tempnology*, the case he argues provides strong support for this motion. Indeed, the Arizona State Court analyzed the facts of this case within the context of *Tempnology* and is worth quoting at some length. The Arizona State Court stated:

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Point Center Financial, Inc.

Chapter 7

"In *Mission Product Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019), the trustee rejected a trademark licensing agreement. The Supreme Court held that the debtor's rejection of the licensing agreement did not deprive the licensee, who did not breach the contract, of its rights to enforce the agreement to use the trademarks. The Court ruled that a rejection of a contract is treated like a breach under state contract law. The Court stated, quoting 13 R. Lord, Williston On Contracts §3:32, pp. 701-702 (4th ed. 2013): "[W]hen a contract is breached in the course of performance, the injured party may elect to continue the contract or refuse to perform further." 139 S. Ct. at 1662. The breach does not result in a termination or rescission of the contract. *Id.* As such, the non-breaching party can sue based on the breach. This rule "prevents a debtor in bankruptcy from recapturing interests it had given up." *Id.* at 1663. Nothing in the *Tempnology* decision in any way supports the notion that the breaching party can enforce the rejected contract." Arizona Defendants' RJN, Exh. 6 p. 5.

The Arizona court continued:

"Here, the trustee is the breaching party. A party who commits a material breach of contract has no legal rights to sue to enforce the contract. See e.g., *Brown v. Grimes*, 192 Cal. App. 4th 265 (2011). ("When a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract."); *De Burgh v. De Burgh*, 39 Cal. 2d 858, 863 (1952) ("in contract law a material breach excused further performance by [an] innocent party"); Cal. Civ. Code, § 1439 ["Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by

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the other party ..."). *Id.*

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The Arizona court also provided some contextual support for its reasoning in footnote 2:

"As discussed at oral argument, it is true that this case does not involve a direct dispute between the two parties to the contract. Rather, it involves a claim against a third party. The fundamental point, however, is that the trustee, who breached the contract, has no right to "enforce" the contract. While Grobstein is not suing another party to the Operating Agreement, he purports to be acting under the powers provided him under the Operating Agreement, which he rejected and breached." *Id.*

So, the Arizona court did not analyze the question in terms of whether a contract rejected in bankruptcy makes the contract disappear; rather, the Arizona court analyzed the question on the more nuanced question of whether rejecting a contract is a material breach (it clearly is) by the debtor which then forgives counter performance and/or blocks the debtor as breaching party from suing under the rejected contract. This court finds the analysis persuasive, and even if it were a closer question, this court for reasons explained below would not indulge in second-guessing on the point for reasons of comity.

7. *Rooker-Feldman* Is Probably Not Implicated Here

So, it would seem, despite Trustees assertion that he disagreed with the ruling, that the Arizona State Court has already addressed the application of *Tempnology* and was not persuaded by Trustee's arguments. However, in Trustee's reply, he argues this is not a *Rooker-Feldman* issue by clarifying that he is seeking different relief. Specifically, he argues in his reply that he is

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only attempting to address the issue identified by the Arizona Court by obtaining the appointment of a representative for South 7th who will have indisputable standing to pursue litigation on behalf of South 7th (and not on the contract rejection issue). Moreover, how can this court authorize the filing of a voluntary Chapter 7 without revisiting the issue of standing and authority which, in turn, goes right back to gainsaying what the Arizona court decided? It might be correct that this motion contains a different issue than was before the Arizona State Court and so is not a *de facto* appeal. But it remains that the Arizona court dismissed the Trustee's action on standing grounds, and this motion attempts a horizontal challenge of that ruling because only someone with proper authority can file a petition. Trustee offers only scant authority for this motion, the most compelling of which is likely the court's powers under 11 U.S.C. §105(a). Trustee notes that none of the oppositions have argued that the motion is not in the best interests of the bankruptcy estate and have not identified any interest that would be harmed if the motion succeeds, but that does not solve the question of standing.

Trustee is asking this court for extraordinary relief, which is evidenced by the lack of caselaw where a court granted similar relief on similar facts. The court notes that without explicit authority to buttress granting this unusual motion (i.e. is this really a use, sale or lease of property under §363, or an appropriate invocation of §105? And who has the authority to use, sell or lease in this context of a breached management agreement?) any such order would likely be appealed, resulting in yet more litigation and expense for the estate, for no clear benefit to Debtor or its creditors. The court also notes that Trustee might have another arrow in the quiver, which is that Debtor is purportedly the largest creditor of both Olive Avenue and South 7th. As such, Trustee asserts, he can simply force both entities into an involuntary bankruptcy and achieve substantially the same result as he seeks through this motion. Why not just do that? After all, this motion is procedurally suspect as Trustee has, at best, questionable standing to bring this motion, and the motion is conspicuously short on solid, relevant authority. The

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procedural history of this case is muddy enough and the court does not wish to add another layer. Thus, this motion should be denied, and Trustee should pursue the involuntary bankruptcy route if he believes it viable and appropriate. The court makes no findings in that regard.

8. Comity and Abstention

But quite aside from those questions this court is most reluctant to second guess the decision in the Arizona action, and even if a new Chapter 7 trustee were appointed for one or both of Olive Avenue and South 7th bankruptcy estates, that/those trustee(s) would still have to deal with the same question of whether Trustee has/had standing to sue on behalf of the estate or even to file the petition(s) in the first place. But, presumably, the Trustee for Point Center would have authority to file a claim for money as a creditor, or an involuntary petition as a creditor, but that may be the full extent of his authority.

Federal courts have discretion to decline jurisdiction when there is a pending state court action. The *Colorado River* abstention doctrine from *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), comes into play where parallel litigation is being carried out, particularly where federal and state court proceedings are simultaneously being carried out to determine the rights of parties with respect to the same questions of law. Under such circumstances, it makes little sense for two courts to expend the time and effort to achieve a resolution of the question. The principle rests on considerations of "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River*, 424 U.S. at 817 (citing *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183 (1952)). One such example described by the *Colorado River* court was "that the court first assuming jurisdiction over property may exercise that jurisdiction to the exclusion of other courts." *Id.* at 818 (citation omitted).

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Unlike other abstention doctrines, application of the *Colorado River* doctrine is prudential and discretionary and is a way to save judicial resources and avoid wasteful duplication of litigation. *Id.* Typically, such factors considered by the court include the order in which the courts assumed jurisdiction over property, the order in which the courts assumed jurisdiction over the parties, the relative inconvenience of the forum, the relative progress of the two actions, the desire to avoid piecemeal litigation, whether federal law provides the rule of decision, whether the state court will adequately protect the rights of all parties, whether the federal filing was vexatious (intended to harass the other party) or reactive (in response to adverse rulings in the state court).

Further, the parallel proceedings need not be identical to be parallel. See *Janopaul Block Co. v St. Paul*, 830 F.Supp.2d 976, 982 (S.D. Cal. 2011) (proceedings are considered parallel for purposes of the *Colorado River* doctrine where substantially the same parties are contemporaneously litigating substantially the same issues in federal and state courts.); *AAR Int'l, Inc. v. Nimelias Enters. S.A.*, 250 F.3d 510, 518 (7th Cir. 2001) ("[t]he question is not whether the suits are formally symmetrical, but whether there is a substantial likelihood that the [state court] litigation will dispose of all claims presented in the federal case.)

Here, all factors to be considered by the court weigh in favor of abstaining from exercising jurisdiction over the parties' disputes. The Arizona Action remains pending regarding the State Court Defendants' Cross-complaint to quiet title to the Property. The Arizona Action was filed first (and by the Trustee), has been pending for over a year and a half, and involves real property located in Arizona. The State Court Defendants have expended significant time and expense in conducting discovery and litigating in the Arizona Court. All the claims in the Cross-complaint are state law claims. Moreover, Mr. Grobstein as Trustee filed the Motion only after entry of the

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judgment and after the State Court Defendants proceeded with obtaining relief on their Cross-complaint. Clearly, Trustee filed this Motion in response to adverse rulings (both actual and anticipated) in the Arizona Action.

Moreover, under the principles of federalism, courts should abstain from exercising jurisdiction when a state court proceeding is pending to avoid unnecessary conflict between state and federal governments. See *Younger v. Harris*, 401, U.S. 37 (1971); *United States v. Morros*, 268 F.3d 695, 707 (9th Cir. 2001). Courts apply the *Younger* abstention not only to pending state proceedings that are criminal, but "also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987).

Courts must first analyze whether the parallel state action falls within one of three categories: (1) criminal prosecutions, (2) "certain civil enforcement proceedings," and (3) "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013). Such state court ability includes the ability to enforce a state court judgment. See, e.g., *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13-14; *Lebbos v. Judges of Superior Court, Santa Clara Cnty.*, 883 F.2d 810, 815 (9th Cir.1989). Moreover, property law is deemed an important state interest warranting *Younger* abstention. *Harper v. Public Service Com'n of W.Va.*, 396 F.3d 348, 352 (4th Cir. 2005); see, e.g., *Middlesex Cnty. Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

Here, Trustee seeks a *de facto* horizontal appeal of the Judgment. Moreover, the Arizona Action is pending regarding the State Court Defendants' Cross-complaint to quiet title as to the Property. The Judgment is

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entitled to the same claim-preclusion and issue-preclusion effects it would receive in the Arizona state courts. See *Exxon Mobil Corp.*, 544 U.S. at 293. The court should allow the Arizona Action to proceed as the State Court Defendants are reportedly days away from obtaining a judgment. For all these reasons, the court should deny the Motion.

The foregoing analysis is entirely consistent with decisions interpreting the formal abstention provisions found at 28 U.S.C. §1334, which provides in pertinent part, "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." For purposes of section 1334, "related to" has been interpreted to mean "whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *In re Feitz*, 852 F.2d 455, 457 (9th Cir. 1988). Now, the court realizes this is only obliquely an abstention question, since it would be the Arizona bankruptcy court, not this court, that would preside in such a hypothetical case. But still, these principles inform this court's ruling upon this motion; if this motion were granted this court would necessarily intrude into the questions already decided by the Arizona state court on the question of authority and standing. Furthermore, *In re Tucson Estates*, 912 F.2d 1162 (9th Cir. 1990) enumerates a multi-part test of elements a court will consider in determining whether to abstain. These factors include: (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

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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. *Id.* at 1167.

For the reasons already discussed, and for other reasons that are hopefully obvious, this court finds the great preponderance of those *Tucson* elements are present here in favor of abstention concerning any issues involving standing of the Point Center estate to act as manager for Olive Avenue or South 7th.

To be clear, this court understands that the Arizona State Court only dealt with South 7th, but the court notes that Trustee faces the same hurdle of demonstrating standing with respect to Olive Avenue. The court believes that the reasoning by the Arizona State Court was sound and sees no reason why it would not also apply to Olive Avenue. Furthermore, the court does not wish to invite the possibility of inconsistent rulings, which again, would only add to the complexity of this case.

9. No Notice of the Motion to the Members of South 7th

Not surprisingly, Trustee did not provide notice of the Motion to any of the members of South 7th. Nor did Trustee provide any notice to the State Court Defendants. The Arizona Court found he was not the manager of South 7th, that the members previously voted in TAMCO to replace PCF as manager, and that Trustee has no standing to act on behalf of South 7th. Trustee has been adjudged a third party to South 7th with absolutely no authority to act on its behalf. At the very least Trustee should be required to provide notice to all members of South 7th of his efforts in the pending motion, together with ample opportunity for response, particularly on such a

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weighty issue as filing a voluntary liquidation petition in bankruptcy.

**10. The Motion Is an Improper Attempt to Circumvent the
Requirements of 11 USC§303**

Finally, the Motion is an improper attempt by Trustee to circumvent the requirements of Section 303 (involuntary bankruptcy cases). Section 105 authorizes bankruptcy courts to take any action to enforce or implement court orders or rules or to prevent an abuse of process. See *In re Elm Inn, Inc.*, 942 F.2d 630, 634 (9th Cir. 1991); *In re Jacobsen*, 378 B.R. 805 (Bankr. E.D. Tex. 2007), judgment aff'd, 609 F.3d 647. The broad powers conferred by Section 105(a) are consistent with the "traditional understanding" that bankruptcy courts are courts of equity to be exercised in a manner not inconsistent with the provisions of the Bankruptcy Code. *In re Gurney*, 192 B.R. 529, 537 (9th Cir. 1996). "Bankruptcy courts, being courts established by Act of Congress, 'have the power to regulate vexatious litigation pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1651.'" *In re Stanwyck*, 450 B.R. 181, 200 (C.D. Cal. 2011). Clearly, the Motion is Trustee's attempt to circumvent the Arizona Judgment and the Bankruptcy Code requirements, but in a manner that presumes he has authority to file voluntary petitions. His real goal is to collect money and so, if bankruptcy is the proper avenue at all (and the court makes no determination), he should file an involuntary petition within the requirements of §303.

Deny, but authorize involuntary petitions in accordance with the dictates of §303 if the Trustee determines that to be an appropriate remedy and statutory prerequisites are satisfied

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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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8:16-15157 Mt Yohai, LLC, a Delaware Limited Liability Compan

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#9.00 Trustee's Final Report And Application For Compensation:

THOMAS H. CASEY, CHAPTER 7 TRUSTEE

WEILAND GOLDEN GOODRICH LLP, ATTONREY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, ACCOUNTANT FOR CH 7 TRUSTEE

UNITED STATE BANKRUPTCY COURT, CLERK OF THE COURT COSTS

U.S. TRUSTEE, U.S. TRUSTEE QUARTERLY FEES

FRANCHISE TAX BOARD, OTHER STATE OR LOCAL TAXES

FRANCHISE TAX BOARD, OTHER STATE OR LOCAL TAXES

Docket 343

Tentative Ruling:

Tentative for 9/1/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Mt Yohai, LLC, a Delaware Limited

Represented By
Marc C Forsythe

Trustee(s):

Thomas H Casey (TR)

Represented By
Jeffrey I Golden
Faye C Rasch
Ryan W Beall

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8:19-14912 Igor Shabanets

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#10.00 Motion To Compel Trustee's Abandonment Of Property Per 11 USC 554(B)
And FRBP 6007(B)

Docket 143

Tentative Ruling:

Tentative for 9/1/20:

This is the Debtor's Motion to Compel Trustee's Abandonment of Property. The motion is opposed by judgment creditor, Remares Global, LLC ("Remares") and the Chapter 7 Trustee, Richard Marshack ("Trustee").

1. Basic Facts

In 2012, Debtor set up §529 plans for his children German, Oleg and Vasilisa at Merrill Lynch in Aventura, FL by depositing \$130,000 into each account. Debtor is the owner of the accounts and his children, Oleg, German and Vasilisa are the beneficiaries ("529 Funds"). On May 3, 2019, Remares filed its Florida sister-state judgment in Orange County Superior Court and judgment was entered in California in favor of Remares and against Debtor for \$10,324,378.84. On August 15, 2019, Remares caused the California Court to issue a writ of execution.

On August 22, 2019, Remares filed a complaint against Olga Shabanets ("Ms. Shabanets") and Olga Shabanets as Trustee of 2012 Irrevocable Trust Agreement of Igor Shabanets, u/a/d November 12, 2012 ("Shabanets Trust"), Igor Shabanets, and Merrill Lynch, under California Code of Civil Procedure 3439.04 and 3439.05 to avoid fraudulent conveyances, initiating case number 30-2019-01092348-CU-NP-CJC in the Superior Court for the County of Orange ("State Court Action"). On

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September 17, 2019, Remares caused Debtor to be served with an ORAP issued by the Superior Court. On December 20, 2019, Remares filed its first amended complaint ("Complaint").

On December 21, 2019, Debtor filed a voluntary petition for bankruptcy under Chapter 11 initiating this bankruptcy case. On January 9, 2020, Remares filed a notice of removal of the State Court Action, initiating adversary proceeding number 8:20-ap-01002-TA ("Removed Action"). On February 7, 2020, after motion by Remares, the court entered an order instructing Merrill Lynch to deposit \$3,033,215.05 into the bankruptcy court register ("Merrill Lynch Funds"). On February 10, 2020, defendants, Ms. Shabanets" and Shabanets Trust filed a Notice of Consent to Removal. Also, on February 10, 2020, as Dk. No. 72, the court entered an order converting the case to Chapter 7. On February 11, 2020, Richard A. Marshack ("Trustee") was appointed as the Chapter 7 trustee. Also, on February 11, 2020, defendants Ms. Shabanets, individually and in her capacity as the trustee of the Shabanets Trust, and Igor Shabanets (collectively "Defendants") filed an answer to the Removed Action.

On April 2, 2020, Trustee filed a notice of substitution of Trustee as party-in-interest for Remares because only the Trustee has standing to prosecute avoidance actions. On April 24, 2020, Trustee filed a stipulation with Merrill Lynch where it would be dismissed as a defendant from this adversary. The Court approved the stipulation, dismissing Merrill Lynch as a defendant on May 1, 2020. On May 8, 2020, Remares filed a complaint against the Trustee, Debtor, and Ms. Shabanets, seeking declaratory relief regarding the validity, priority, or extent of its alleged lien(s) on the interpleaded funds deposited with the Court in this case, initiating adversary proceeding number 8:20-ap-01079-TA ("Declaratory Relief Adversary"). On July 16, 2020, default was entered against Debtor, Ms. Shabanets individually, and Ms. Shabanets as trustee for the Shabanets Trust in the Declaratory Relief Adversary. On July 20, 2020, as Dk. No. 142, Debtor filed amended schedules, including an amended schedule of exemptions. Also, on

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July 20, 2020, as Dk. No. 143, Debtor filed the Motion.

2. Abandonment?

There appears to be agreement among the parties that the 529 funds are not part of the Debtor's bankruptcy estate. Trustee in his opposition asserts that the motion is procedurally incorrect as he cannot be ordered to abandon property that is not property of the estate, and in that way, the motion does not make sense and should be denied. The analysis could stop there.

Furthermore, Remares persuasively argues that it has a lien on the 529 Funds. Remares asserts that it obtained liens on the 529 Funds, through its Florida and California bank levies and from personal service on Debtor of a California Order to Appear for Examination ("ORAP"). "Service of the ORAP on the judgment debtor creates an unenforceable lien in the debtor's nonexempt personal property, even without a levy on the property." *In re Burns*, 291 B.R. 846, 850 (2003 BAP 9th Cir.). "[T]he lien upon all nonexempt property is created at the time the judgment debtor is served with the notice of the examination." *Id.* "Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court." CCP § 708.110(d). "Section 708.110 does not specify which personal property is thereby encumbered, or whether the judgment debtor must have custody and control of the property, but it does provide that 'the lien on the judgment debtor's property attaches whether or not the property is described in the notice in sufficient detail to be reasonable identifiable.'" *Id.* Thus, Remares argues that it has a lien on the Merrill Lynch Funds.

Furthermore, Remares persuasively argues that Debtor has admitted that Remares has liens on the 529 Funds because default was entered against him in Remares' adversary complaint. In the complaint, Remares alleges it has liens on all of the Merrill Lynch Funds, including the 529 Funds.

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The complaint asks this court to determine the validity, extent and priority of Remares' liens. Debtor failed to answer, so default was entered against him. As a result of the default, the allegations in the complaint are deemed admitted. Remares also persuasively argues that Debtor cannot claim the 529 Funds exempt because they are not exempt under California law. While IRC §529 accounts may be exempt in Maine, as Debtor asserts, Debtor cannot use Maine exemptions because he filed his bankruptcy petition in California. "California has opted out of the federal exemption scheme." *In re Gomez*, 530 B.R. 751, 754 (Bankr. E.D. Cal. 2015) (See also CCP § 703.130). "As a consequence, unless preempted by federal law, it is California state law, and not federal law [nor law from the state of Maine], which defines a debtor's right to claim particular exemptions and the amount of those exemptions." *Id.* at 754. Thus, Debtor cannot use Maine law to claim the 529 Funds exempt. As one court noted, "at least 27 states have exempted section 529 savings accounts from levy by creditors. However, California is not one of those states." *O'Brien v. AMBS Diagnostics, LLC*, 246 Cal.App.4th 942, 949-950 (2016). In *O'Brien* it was argued, like Debtor in this case, that debtor's 529 funds were exempt. The *O'Brien* court held there is no California exemption for 529 Plans and added "we certainly cannot go one step further and create a brand-new exception from whole cloth, no matter how persuasive the policy reasons that might support it." *Id.* Accordingly, as argued by Remares, the 529 Funds are excluded from the Estate and Remares appears to have valid liens on all the Merrill Lynch Funds. Remares, therefore, requests that the court should release the funds to Remares.

3. Trustee's position

Trustee appears to mostly concur with Remares (except for turnover). Trustee asserts that the estate may abandon property to a third-party lienholder, in appropriate circumstances. "Following abandonment, 'whoever had the possessory right to the property at the filing of bankruptcy again

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reacquires that right." *In re Dewsnup*, 908 F.2d 588, 590 (10th Cir. 1990) (aff'd sub nom. *Dewsnup v. Timm*, 502 U.S. 410 (1992)) "The legislative history and weight of authority holds that abandonment to a third party with a possessory interest is entirely proper." *In re First Magnus Financial Corp.*, 2008 WL 5101347 at *5 (Bankr. D. Ariz. 2008).

Trustee argues that if abandonment is the correct procedural vehicle for the release of interpleaded funds claimed to be excepted from property of the estate under 11 U.S.C. § 541(b)(6), the court should determine whether Debtor, Remares, or any other party has a superior possessory right to the funds. Trustee suggests that because those competing interests are properly before the court in the Removed Action, the court should deny this Motion and adjudicate those interests solely in the context of the Removed Action. To do otherwise would potentially lead to inconsistent outcomes and would not conserve judicial efficiency by splitting the claims into competing adversary proceedings and contested matters.

4. Conclusion

The court agrees with the Trustee, though Remares does makes some compelling arguments. Perhaps somewhat tellingly, Debtor has not filed a reply to either of the oppositions. For the reasons asserted by Trustee, it appears that this motion is procedurally infirm because: 1. The 529 Funds are not property of the estate, so abandonment is not appropriate; 2. proceedings to determine the extent and validity of liens are to be pursued in adversary proceedings. See Fed. R. Bankr. Proc. 7001(2) and 3. there appears already to be a pending adversary proceeding in which these issues are joined, i.e. the Removed Action. Therefore, because it makes little sense and is procedurally suspect, the motion should be denied.

Deny

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Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

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8:17-10289 Timothy Bror Touve

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#11.00 Motion For Order Authorizing Trustee To (1) Retain Bkassets.Com As Auctioneer; (2) Hold Auction Sale Of Certain Assets Of The Estate; And (3) Make/Authorize Certain Disbursements And Sign Documents In Connection With Auction

Docket 94

Tentative Ruling:

Tentative for 9/1/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Timothy Bror Touve

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

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8:17-13482 Catherine M Haretakis

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#12.00 Motion For Summary Judgment Re: Motion To Disallow Debtor's Claimed Homestead Exemption (Doc 64-68)

Docket 334

Tentative Ruling:

Tentative for 9/1/20:

This is Creditor, Pacific Western Bank's ("Pacific Western") Motion for Summary Judgment disallowing Debtor's Claimed Homestead Exemption. The motion is opposed by Debtor, Catherine Haretakis ("Debtor").

1. Background

The following facts are apparently undisputed:

A. Debtor's Loan Default.

In or about June 2006, Debtor and John A. Haretakis (together, "Borrowers") borrowed the original principal amount of \$500,000.00 from Pacific Western (the "Loan"). Borrowers defaulted on the Loan in November 2010. Despite demand, Borrowers failed to cure their defaults. Accordingly, on May 27, 2011, Pacific Western filed its complaint against Debtor and John A. Haretakis for Breach of Promissory Note and Common Count (the "Complaint").

B. Debtor Acquires the Temecula Property in the Name of a Business Associate to Avoid Pacific Western's Claims.

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On June 21, 2011, Robert B. Grant ("Grant"), a business associate of Defendants, acquired title to certain real property located at 36575 Calle Puerta Bonita, Temecula, California 92592 (the "Temecula Property"), by Grant Deed from Aurora Loan Services LLC. RJN, Exh. 3. Concurrently with recording of that Grant Deed, a Deed of Trust securing a loan in the amount of \$480,000.00 nominally to Grant was recorded against the Temecula Property (the "Temecula Deed of Trust"). RJN, Exh. 4. Notwithstanding that title to the Temecula Property was held in Grant's name and that Grant was the trustor under the Temecula Deed of Trust, Debtor testifies that she and her husband actually "owned" and maintained possession of the Temecula Property.

**C. Pacific Western Obtains Judgment and Records a
Riverside Abstract of Judgment.**

On August 13, 2012, under its complaint Pacific Western obtained and now holds a final, non-appealable judgment against Debtor in the original principal amount of \$474,593.91 (the "Judgment"). RJN, Exh. 5. On October 5, 2012, Pacific Western recorded its Abstract of Judgment in the Official Records of the County of Riverside (the "Official Records"). RJN, Exh. 6. Pacific Western recorded an Amended Abstract of Judgment in the Official Records on December 4, 2012. RJN, Exh. 7 (the "Abstract").

**D. Grant Transfers the Temecula Property to Matthew
Haretakis.**

On May 2, 2016, a Quitclaim Deed was recorded transferring an interest in the Temecula Property from Grant to Matthew Haretakis, the Debtor's son. RJN, Exh. 8. Debtor has testified that she continued to live at

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the Temecula Property throughout until "we sold the Temecula Property" in September 2016. Haretakis Decl., ¶ 6.

**E. The Debtor Never Recorded a Declaration of Homestead
with respect to the Temecula Property.**

The Debtor never held legal title to the Temecula Property, despite contending that she was the true owner. Additionally, the Debtor never recorded a declaration of homestead under California Code of Civil Procedure §704.910, *et seq.*

**F. The Sale of the Temecula Property (Free of Pacific
Western's Judgment Lien?)**

On September 8, 2016, Matthew Haretakis sold the Temecula Property, as evidenced a Grant Deed on that date. RJN, Exh. 9. The sale consideration for the Temecula Property was \$1,040,000. The lien created by Pacific Western's Abstract attached to any interest of Debtor in real property. Because the Temecula Property was titled in the name of Matthew Haretakis rather than in the name of Debtor (the true owner), however, Pacific Western did not receive any notice and did not receive any proceeds in partial satisfaction of its Judgment upon closing of this voluntary sale of the sale of the Temecula Property. Debtor has testified that \$211,500 of the proceeds of sale of the Temecula Property were used for a down payment for purchase of a new residence located at 2665 Orange Vale Lane, Riverside CA (the "Riverside Property").

G. Matthew Haretakis Purchases the Riverside Property.

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Matthew Haretakis, Debtor's son, acquired title to the Riverside Property by Grant Deed recorded in the Official Records on September 22, 2016 (RJN, Exh. 10), using some of the proceeds of the sale of the Temecula Property, as well as financing secured by a Deed of Trust recorded in the Official Records on the same day. RJN, Exh. 11 (the "Riverside Deed of Trust"). The Riverside Deed of Trust states that it secures payment of a note in the amount of \$417,000.00, plus interest.

H. Matthew Haretakis Quitclaims his Interest in the Riverside Property to the Debtor.

By Quitclaim Deed executed and recorded on August 29, 2017, the day before the Debtor filed this bankruptcy case, Matthew Haretakis transferred his interest in the Riverside Property to the Debtor. RJN, Exh. 12. The Documentary Tax calculation on the Quitclaim Deed indicates that the transfer is a gift, and that the tax is \$0 computed on the consideration or value of property conveyed. Pacific Western's Abstract now formally reflects of record on the title for the Riverside Property, since for the first time since 2016 Debtor appears of record on title. The amount of the Judgment, including post-judgment interest, but not including certain post-judgment fees and costs that have been incurred by Pacific Western in enforcing the judgment, was then in excess of \$701,393.78.

I. The Debtor Files Bankruptcy and Asserts a Homestead Exemption in the Riverside Property.

The Debtor filed her petition for relief under chapter 11 on August 30, 2017, commencing the instant bankruptcy case. On September 13, 2017, the Debtor filed her Schedules and Statement of Financial Affairs. The Debtor's Schedule C refers to the Riverside Property as her residence and she claims

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an exemption of \$175,000 pursuant to Cal. Code Civ. P. § 704.730. RJN, Exh. 13. In Schedule D, the Debtor lists the Pacific Western Judgment as a secured claim against the Riverside Property. RJN, Exh. 14. In an amended Schedule A, the Debtor lists the Property with an estimated value of \$675,000. RJN, Exh. 15. The §341(a) Meeting of Creditors in this case was held and concluded on October 10, 2017.

J. Pacific Western Objects to the Debtor's Claim of Homestead Exemption in the Property.

On November 9, 2017, Pacific Western timely filed its motion objecting to the Debtors' claim of homestead exemption (Doc 64-68, the "Exemption Objection") pursuant to Rule 4003(b) of the Federal Rules of Bankruptcy Procedure ("FRBP"). The court has elected to coordinate the Exemption Objection with the adversary proceeding in which Pacific Western has objected to the Debtor's discharge (Adv. No. 8:17-ap-01240-TA).

K. The Debtor Converts to Chapter 7.

After Pacific Western filed its liquidating chapter 11 plan, the Debtor filed her motion to convert her chapter 11 case to a case under chapter 7. On November 28, 2018, the Court entered its order converting the case. (Doc 234). Thomas H. Casey (the "Trustee") was appointed as the chapter 7 trustee on December 14, 2018. (Doc 252).

L. The Trustee Abandons the Property.

The chapter 7 trustee filed a Motion for Order Authorizing Abandonment of Real Property Pursuant to 11 U.S.C. § 554 (Doc 271, the

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"Abandonment Motion") with respect to the Riverside Property that is the subject of this Motion. In connection with the Abandonment Motion, the Trustee presented evidence that the Property's value was approximately \$570,000 to \$600,000. Pursuant to its order entered on May 9, 2019, the court granted the Abandonment Motion (Doc 275, the "Abandonment Order").

As the court understands the motion, and as summarized by Debtor, this motion has two aspects: (1) whether the Riverside Property was acquired with "non-exempt funds"; and (2) whether the Riverside Property was "acquired" after Pacific Western's judgment lien attached. Debtor has decided not to challenge the first issue. This is a pivotal point, as explained below. Thus, the second issue is the sole issue requiring resolution.

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.

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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).

3. Was the Riverside Property Acquired After Pacific Western's Judgment Lien Attached?

Under California law, a judgment debtor who uses non-exempt funds to purchase a new residence after the recording of an abstract of judgment is not entitled to a homestead exemption as against that prior judgment. *SBAM Partners v. Cheng Miin Wang* (2008) 164 Cal.App.4th 903. In *SBAM Partners*, the judgment debtor purchased a condominium more than two years after its judgment creditor recorded an abstract of judgment. *SBAM Partners*, 164 Cal.App.4th at 906. Approximately ten years later, the creditor

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renewed its judgment and commenced proceedings for an execution sale of the condominium. *Id.* The debtor claimed a homestead exemption, arguing that the abstract of judgment lien did not attach until the date of purchase, at which time the condominium was already a homestead because he moved in on the date the deed was recorded. *Id.*, at 906-07, and n. 6. The debtor submitted no evidence that the condominium was purchased with exempt funds. *Id.*, at 906. The creditor argued that a homestead could not be created for property acquired after recording of its abstract. *Id.*, at 907. Essentially, the issue was, in the context of a simultaneous acquisition and effect of already recorded lien, which interest prevailed? The trial court entered an order compelling the sale and denying the debtor's exemption claim. *Id.* The California Court of Appeals affirmed the trial court's order. The appeals court undertook a thorough analysis of the relevant judgment lien (Cal. Code Civ. P. § 697.340) and exemption statutes (Cal. Code Civ. P. § 704.710(c)). *Id.* at 908-913. The *SBAM Partners* court first explained that the homestead character of property is determined as of the date of the attachment of the judgment lien. For after-acquired property, attachment occurs on the date of purchase (such that attachment of the judgment lien and (possible) creation of a homestead occur simultaneously). *Id.*, at 908.

But the question of priority in *SBAM Partners* turned on a careful reading of the statutory scheme. Section 704.710(c) provides:

"Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse

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resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Critically, the *SBAM Partners* court noted that the Legislative Committee comment to §704.710 states that "subdivision (c) is intended to preclude a judgment debtor from moving into a dwelling after creation of a judgment lien or after a judgment levy in order to create an exemption." *Id.*, at 908. Thus, under §704.710, there is no general homestead for an after-acquired dwelling, *unless the debtor has used exempt proceeds from a prior homestead. Id.*, at 912 (italics added). The *SBAM Partners* court further held that if §704.710 were interpreted to provide an exemption for any after-acquired property, that would render superfluous the provision of subdivision (c) specifically allowing a homestead exemption on an after-acquired dwelling purchased with exempt proceeds. *Id.* The *SBAM Partners* court finally summarized its holding that §704.710 clearly does not allow a homestead exemption on property acquired after the recording of a judgment lien unless the property was purchased with exempt proceeds from a prior homestead. *Id.*, at 912-13.

Here, the outcome seems clear. Debtor does not contest that she used non-exempt proceeds from the sale of the Temecula Property to purchase the Riverside Property. Thus, Pacific Western's lien at the very least attached immediately upon the Debtor's acquisition of her interest in the Riverside Property and is, therefore, not subject to a claim of homestead exemption by Debtor under *SBAM Partners*. This is correct without examining the rather more nuanced question of whether the judgment lien actually attached earlier than August 29, 2017 when Debtor went on title under the theory that she at all earlier times held the equitable interest as the true owners of both the Temecula and Riverside properties, which can also be encumbered by existing judgment liens. The critical point is that the Riverside Property was not acquired with exempt funds and is, therefore, not within the definition of

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"homestead" under California law as interpreted in *SBAM Partners*.

Moreover, Debtor's bankruptcy does not change the result under California Law. Pacific Western's abstract is not subject to Debtor's claim of homestead exemption on the after-acquired Riverside Property. As Pacific Western correctly argues, in applying the California statutory judicial lien and homestead exemption scheme in the lien avoidance context, the Ninth Circuit Bankruptcy Appellate Panel has come to the same conclusion as that in *SBAM Partners* – a debtor is not entitled to a homestead exemption superior to a judgment lien on property the debtor acquired after recording of the judgment. *In re Pederson*, 230 B.R. 158 (9th Cir. BAP 1999). In *Pederson*, the debtor moved unsuccessfully to avoid a judgment lien against after acquired property on the ground that the lien impaired the debtor's claim of homestead exemption. The BAP reviewed applicable California law on attachment of a judgment lien (Cal. Code Civ. P. §§ 697.310(a), 697.340(a)) and determined that "the statutory language providing that the lien attaches to after-acquired property 'at the same time it is acquired' can only mean that the lien attaches simultaneously with the debtor's acquisition of the property." *Pederson*, 230 B.R. at 163. In the case of after-acquired property, the BAP held that the debtor never held an interest in the property and therefore never had a right to claim an exemption, before the lien attached. *Id.* Accordingly, the BAP ruled that the judgment lien was not avoidable under Bankruptcy Code section 522(f). *Id.* This result is consistent with *SBAM Partners*.

Thus, Pacific Western appears to be correct that under California Code of Civil Procedure §704.720 Debtor is not entitled to claim a homestead exemption for the Riverside Property, which was acquired with non-exempt funds after the recording of Pacific Western's Abstract.

4. Debtor's Equitable and Legal Defenses

Debtor argues that she is entitled to the "automatic homestead" of CCP §704.710 because she resided in the Riverside Property before Pacific

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Western's lien attached. Debtor also argues that Pacific Western's citation to *SBAM Partners* is unpersuasive because of a critical distinction on the facts from the present case. In *SBAM Partners*, Debtor asserts, the judgment debtor, Wang, "purchased the condominium in question, located in Los Angeles County; he has resided there continuously since the date of purchase." (but not before). In other words, the debtor in *SBAM Partners* moved into the property, and commenced his residence, *after acquiring title*. By contrast, Debtor asserts that she has resided in the Riverside Property since September 2016, almost three years before it was first acquired in record title. But there are major flaws in Debtor's argument.

It is true she did not acquire *record* title of the Riverside property until August 29, 2017, one day before the bankruptcy filing. But *SBAM Partners* teaches that in a case of simultaneous acquisition of property and attachment of preexisting judgment lien, the contest goes in favor of the existing judgment creditor. So, stopping right there, Debtor loses, unless some distinction with a difference can be made from the fact she moved in before acquiring record title. No such distinction appears in this case, based on how the argument is framed. CCP §697.340(a) provides: "A judgment lien on real property attaches to *all* interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal *or equitable*) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created . . .". (italics added). CCP §697.340(b) provides: "If any interest in real property in the county on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired." Debtor asserts that she moved into the Riverside Property in September 2016 and has resided there continuously to this date, as set forth in the Declaration of Catherine Haretakis. But even her argument that she had a preexisting equitable interest in the Riverside property that escaped the attachment of the judgment lien fails, as explained below.

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Debtor argues that as a matter of law in California, a debtor need not own an interest in real property to claim a homestead exemption. In support of this contention, Debtor cites *Broadway Foreclosure Investments, LLC v. Tarlesson*, 184 Cal. App. 4th 931 (2010). The Court of Appeal affirmed the trial court's ruling that the property was Tarlesson's homestead because it was her principal dwelling where she resided when the judgment creditor's lien attached to the property and continuously thereafter. CCP §703.020 provides that the statutory exemptions "apply only to property of a natural person" The judgment creditor, Broadway, interpreted §703.020 to somehow imply a requirement of title ownership. The appellate court disagreed: "While [CCP] section 703.020 states that the statutory exemptions 'apply only to property of a natural person,' there is nothing that suggests 703.020 requires that a claimant own the property subject to a claim of exemption rather than merely possess it ." *Id.* at 937.

In reply, Pacific Western argues that Debtor's assertion that Pacific Western's abstract of judgment lien attached to the Riverside Property "on the day the Debtor acquired title" is wrong as a matter of law. Pacific Western argues that pursuant to California Code of Civil Procedure §697.340(a), Pacific Western's Abstract of Judgment lien attached to all interests of the Debtor in real property (not only legal title) held at the time the Abstract of Judgment was recorded, or thereafter. Pacific Western notes that Debtor quotes this statute but appears to miss its import. Pacific Western asserts that the judgment liens attach to "all interests" of a debtor in real property include not just interests of record, but all equitable interests as well. *Daff v. Wallace (In re Cass)*, 476 B.R. 602, 616-17 (Bankr. C.D. Cal. 2012) aff'd 2013 WL 1459272 at *15 (a perfected judgment lien attaches to all a debtor's interests in real property, including equitable interests).

Debtor arguably held an equitable interest in the Riverside Property at the time of its purchase in 2016 even though not record title. In fact, Pacific Western points out that Debtor originally defended her homestead exemption claim on the grounds that she had an equitable interest in the Temecula

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Property, which supported an automatic homestead exemption for that property. But none of this saves Debtor's homestead priority because indisputably Pacific Western's abstract was already of record even before acquisition of the Riverside property. The Debtor then argues that the proceeds of her voluntary sale of the Temecula Property were exempt. Pacific Western asserts that the Debtor herself described that equitable interest as follows:

The Debtor freely concedes that she and her husband were the *de facto* owners of the Temecula Property. They paid the mortgage and the property taxes. They resided in that property from the date it was acquired by Mr. Grant until the date their adult son, Matthew Haretakis, sold it. .Response, Doc 81, p. 6, ll. 6-9.

Based on the Debtor's "*de facto*" ownership of the Temecula Property, she held an equitable interest in that property. Response, at n. 3. Pacific Western asserts that Debtor held the exact same "*de facto*" ownership interest in the Riverside Property at the time it was acquired. Pacific Western points out that the Debtor admits in discovery responses that she held an interest in the Riverside Property prior to acquiring legal title:

The Respondent [Debtor] claims an interest in the Riverside Property because she is the holder of title. She also claims an interest because the funds used to purchase the Riverside Property came from the Temecula Property, in which the Debtor also claimed an interest, by reason of her supplying the down payment and reimbursing Mr. Grant for the monthly mortgage, insurance and tax payments, pursuant to the terms of the Funding Agreement and Installment Land Contract. Declaration of A. Kenneth Hennesay, Jr., filed concurrently herewith ("Hennesay Decl."), Exh. 1, pp. 8-9 (Interrogatory No. 6 and Response).

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Pacific Western next asserts that Debtor and her husband authorized Matthew Haretakis to sell the Temecula Property and Matthew Haretakis received \$522,254.30 in net proceeds from that sale, for the benefit of the Debtor and her husband. Hennesay Decl., Exh. 2, p. 22 (Request for Admission Nos. 20 and 21.) Debtor and her husband were not holders of legal title to the Temecula Property, based on their "*de facto*" ownership interest, but still they apparently considered the proceeds of the sale of that property to be their own and used them to purchase the Riverside Property. The Respondent [Debtor] did not divest herself of the proceeds of Temecula. Matthew purchased Riverside and spent other sums in accordance with the Debtor and her husband's request. They considered the funds theirs, not Matthew's. Hennesay Decl., Exh. 1, p. 7-8 (Interrogatory No. 3 and Response re Paragraph 42); see also, Hennesay Decl., Exh. 2, p. 23 (Request for Admission No. 24).

In addition to funding the down payment for purchase of the Riverside Property, Debtor funded payment or paid directly the mortgage, tax and insurance payments for the Riverside Property from the time of its purchase by Matthew on behalf of the Debtor and her husband. Hennesay Decl, Exh. 3. When Matthew Haretakis ultimately transferred legal title to the Riverside Property to the Debtor, Pacific Western asserts, the transfer was made without any consideration (because the Debtor was already the "*de facto*" owner). Hennesay Decl., Exh. 2, p. 24 (Request for Admission No. 29 and Response). Thus, Pacific Western argues, the Debtor's interest in the Riverside Property is admittedly the very same "*de facto*" ownership interest she previously conceded and claimed was sufficient to support a claim of automatic homestead in the Temecula Property. That equitable ownership interest, however, is likely also sufficient to allow Pacific Western's Abstract of Judgment lien to attach at the time she acquired that interest at the time of acquisition of the Riverside Property. See Cass, 476 B.R. at 616-17, aff'd 2013 Bankr. LEXIS 4653, *46 (citing California Code of Civil Procedure §

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697.340(a).

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Debtor's adoption of the losing argument in *SBAM Partners* remains unavailing. Debtor attempts to distinguish this case from *SBAM Partners*, by arguing that the Debtor moved into the Riverside Property and acquired an interest therein before legal title was transferred to her. However, as pointed out by Pacific Western, the debtor in *SBAM Partners* made a similar argument – claiming a homestead exemption and arguing that the abstract of judgment lien did not attach until the date of purchase, at which time the condominium was already a homestead because he moved in on the date the deed was recorded. *SBAM Partners*, at 906-07, and n. 6. The California Court of Appeals noted that the Legislative Committee Comment to California Code of Civil Procedure section 704.710 states, in part, that "[s]ubdivision (c) is intended to preclude a judgment debtor from moving into a dwelling after creation of a judgment lien or after levy in order to create an exemption." *Id.*, at 908. (citing Legis. Com. com., Deering's Ann. Code Civ. Proc. (1998 ed.) § 704.710, p. 451.) The debtor argued that the "creation of a judgment lien" happened upon attachment of the lien to a particular property. The lien creditor in *SBAM Partners* argued that "creation" of the lien happened upon recording of the abstract of judgment. The California Court of Appeals resolved that question in favor of the lien creditor. A judgment lien on real property is created when the lien is recorded, not upon attachment to a particular property. Thus, California's automatic homestead statute precludes a judgment debtor from moving into a dwelling after an abstract of judgment has been recorded in order to create an exemption. *Id.*, at 912-13.

Again, Debtor argues that this case is legally more similar to *Tarlesson*, 184 Cal.App.4th 931. However, as *Pacific Western* points out, while that case distinguishes the holding in *SBAM Partners*, *Tarlesson* itself, is also distinguishable from this case. For example, *Tarlesson* did not involve the after-acquired residence situation found here and in *SBAM Partners*. On the contrary, the debtor in *Tarlesson* had lived in the subject property for about 22 years by the time the judgment creditor acquired its judgment lien. *Tarlesson*,

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184 Cal.App.4th at 938. Also, in *Tarlesson*, the judgment creditor argued that the debtor lost her right to claim a homestead exemption in property when she transferred title to a separate entity. *Id.*, at 934.

Finally, Debtor questions the relevance of the BAP's holding in *In re Pederson* because that case occurred in the context of lien avoidance under §522(f). *In re Pederson*, despite the §522(f) context, is still relevant because it supports *SBAM Partners*, and because there will be no bankruptcy sale of the Riverside Property. Pacific Western argues that since the chapter 7 trustee has abandoned the bankruptcy estate's interest in the Riverside Property, there will be no bankruptcy court approved sale that would require a resolution of the Debtor's claim of homestead exemption.

As noted throughout, Pacific Western appears to have the law on its side based on undisputed facts of this case and the asserted case law. Debtor's arguments are decidedly less compelling and short on relevant legal authority. Thus, summary judgment in favor of Pacific Western is warranted.

However, the court notes that on these facts, it appears that the Temecula property could constitute a *de facto* homestead for Debtor and her husband as they possessed the Temecula property and apparently also paid the mortgage despite title in being in a 3rd party's name. This all apparently occurred prior to the existence of Pacific Western's judgment lien as it was recorded after Debtor went into possession. Thus, it seems that a fair argument could be made that at least some of the funds used to make the Riverside purchase would be exempt funds, thus fulfilling the provision found in the CCP §704.720(b) 6-month safe harbor. However, for reasons unknown to the court, the concluding paragraph in Debtor's opposition concedes that the funds used to purchase the Riverside Property **are non-exempt**, which effectively seals off that argument.

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5. Other Arguments

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Debtor makes a few unpersuasive arguments that are out of place in a summary judgment motion. Debtor complains that Pacific Western is abandoning old legal arguments and asserting new ones. Debtor fails to cite any authority suggesting that this is an improper practice in this context, such that the court is or should be obliged to ignore the new arguments. Similarly, Debtor argues the doctrine of laches because of Pacific Western's delay in pursuing this new line arguments, to Debtor's detriment. Again, Debtor's argument is not supported by authority, but simply asserted. In an apparent attempt to show detrimental change in position supporting a laches or estoppel argument Debtor argues that she might have changed her exemptions to utilize a "wildcard" had she known of Pacific Western's theory. She also argues that the trustee might have filed a preference action instead of merely an abandonment of the Riverside property. Neither argument is the least persuasive. On preference, we do not know why the trustee chose to abandon the property instead of suing to avoid the abstract of Pacific Western's judgment. It might well be because the Trustee did the arithmetic and concluded that it made no economic sense considering the purported value of the Riverside property and senior liens, or it might have been because of the doctrine described in the *Cass* case which holds that the lien was actually placed on the "*de facto*" interest well before the 90 days described in §547(b)(4)(A) and therefore one of the elements of a preference theory was missing. Even less persuasive is the argument that somehow a refinement of Pacific Western's theory in opposing the homestead prejudiced Debtor. No authority is cited for this theory that earlier recitation of all the underpinnings of one's argument is necessary such that the opponent has plenty of time to choose her ground. The contest over the exemption has been known for quite a while and the Debtor does not convincingly explain how she was misled to her detriment in any wrongful way. Lastly, Debtor is just not a sympathetic party on equitable arguments when, seen from a certain perspective, all these machinations were nothing more than a failed

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CONT... Catherine M Haretakis Chapter 7

attempt to avoid Pacific Western's lien through subterfuge. The old precepts that equity is reserved for those who do equity and those seeking equity much approach with clean hands, come to mind.

Grant

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

Trustee(s):

Thomas H Casey (TR)

Represented By
Beth Gaschen

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#13.00 STATUS CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(cont'd from 8-04-20 per order approving stip. to cont. status conf hrg on mtn for administrative claim by Terrace Tower Orange County, LLC entered 7-30-20)

Docket 571

Tentative Ruling:

Tentative for 9/1/20:

This will be treated as a contested matter with the following schedule:

November 30, 2020 deadline to complete discovery;

Dec. 31, 2020 deadline to file pretrial motions;

January 7, 2021 @ 10 a.m. pretrial conference.

Joint pretrial stipulation due per LBRs.

Tentative for 5/27/20:

By stipulation this is treated as a status conference. But no status conference report is filed and the parties have not really informed the court as to how much time is needed for discovery, or what appropriate deadlines would look like.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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CONT... BP Fisher Law Group, LLP

Chapter 7

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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8:19-14518 Ashley Dawn Conrad

Chapter 13

#13.10 Creditor's Motion For Order Approving: (1) Settlement Agreement With Debtor Ashley Dawn Conrad; And (2) Approving Form Of Settlement Agreement **(cont'd from 8-19-20 per order approving stip. re: mtn for settlement agreement entered 8-18-20)**

Docket 57

Tentative Ruling:

Tentative for 9/1/20:

Have we heard from the Chapter 7 trustee? The court is not going to approve a settlement calling, effectively, for a dismissal absent the trustee commenting.

Tentative for 8/19/20:

Was the case converted to Chapter 7? Should same tentative be adopted, on simply go off calendar?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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CONT... Ashley Dawn Conrad
Tentative for 7/15/20:

Chapter 13

Creditor Al Hassas/Sweet Lemons, LLC ("Creditor") moves for an order approving a Settlement Agreement between Creditor and Debtor in the voluntary chapter 13 case. The approval of this motion would result in the dismissal of the Debtor's chapter 13 bankruptcy. Trustee filed an opposition on 6/25/20. Trustee argues that the Settlement Agreement, if approved, should not involve dismissal of the chapter 13 and all payments should be disbursed by the Trustee. Additionally, Trustee requests the Creditor amend their proof-of-claim in accordance with the agreement and Debtor amend the plan to establish the appropriate class or subclass for treatment of the creditor in accordance with the agreement.

On 7/1/2020, Debtor filed a reply to the opposition. She argues the conditions requested by the Trustee would only result in a default on the Settlement Agreement. The agreement states a third-party has agreed to pay the monthly payment straight to the Creditor. Debtor argues if the payments must go through the Trustee for distribution to the Creditor there is too much room for error and the possibility of default is much higher, thus, putting a greater burden on the Debtor. Additionally, Debtor argues if the payments are made to the Trustee this would structurally alter the terms of the agreement and since the payments go beyond the five-year term of the bankruptcy plan, the Trustee could not fully satisfy the entirety of the agreement transitioning it into default.

Creditor and Debtor filed replies to the Trustee's opposition arguing that the *Jevic*-like settlement in contrast does not violate the priority scheme set forth in the Bankruptcy Code. See *Czyzewski v. Jevic Holding Corp.* 137 S. Ct. 973, 979 (2017). Additionally, they argue settlement would allow for the Debtor to begin a "fresh start" moving forward after dismissal. Finally, Creditor argues every prong in the four-prong fair classification test found in *In re Benner*, 146 B.R. 265, 266 (D. Montana 1992) has been satisfied. But *Benner*

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is a separate classification case, not a dismissal case.

Under 11 U.S.C § 105, the court holds the power over the case to approve, dismiss, or deny the motion to approve Settlement Agreement. Here, the motion falls within the scope of § 105 and the court holds power over this action. FRBP 9019 allows for the compromise or settlement of claims and controversies by the Creditor, Debtor, and Trustee following notice and a hearing. In order for the court to approve a proposed settlement the court should consider the following factors, as discussed in *In re Woodson*: 839 F.2d 610,620 (9th Cir. 1988), citing. *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir.), *cert. denied sub nom. Martin v. Robinson*, --- U.S. ----, 107 S. Ct. 189, 93 L. Ed. 2d 122 (1986).

"(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises."

Here, (a) the probability of success in the Creditor's allegedly nondischargeable claim against the Debtor should be regarded as high. This would further burden the Debtor and have the likelihood of never creating an effective reorganization plan; (b) the agreement between the parties has taken place over that last several months with a full merger clause and understanding of each parties' obligations. The Debtor has secured a third-party, who has agreed to the terms and will satisfy all the required payments. (c) The complexity of the situation is straightforward enough. Debtor lost a civil suit to the Creditor who holds the majority debt against the Debtor. The cost of litigation would significantly decrease the total amount in the estate, diminishing the ability to pay not only the Creditor as agreed but any remaining unsecured claims.

But the main issue arises under the last *Woodson* factor: "the paramount interest of the creditors . . ." that is *creditors*, plural. The

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agreement is solely between the Debtor and one Creditor. It fails to take into consideration or even discuss any other creditors who must be treated within the reorganization plan. Understandably, Creditor holds almost 90% of the total debt, but all other creditors must also be considered when approving such a motion, particularly one involving a dismissal. Approving the Settlement Agreement should be a compromise which is "fair and equitable" to *all parties involved*. (italics added) *In re A & C Properties*, 784 F.2d at 1381. The agreement focuses solely on questions of Creditor's and Debtor's concerns but fails to consider at all any other creditors.

The court is not indifferent to the Debtor's fresh start nor to her difficulty in handling a non-dischargeable obligation, nor is the court indifferent to the administrative cost savings to the reorganization effort. All are good points, but the movants fail to convince that these points cannot be handled within the context of a Chapter 13 plan. The fact that payments might continue past the five years is hardly an insuperable impediment. The plan can acknowledge the non-dischargeable nature of the obligation and acknowledge that at the end of term the payments will have to go on since the discharge otherwise generally applicable under the plan will not affect this obligation. The Trustee need not be involved after the end of the term. So, no good reason is given to abandon all other creditors in order to further the convenience of just two parties.

Deny as requested. Suggest continuance for re-draft.

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Party Information

Debtor(s):

Ashley Dawn Conrad

Represented By
Matthew D. Resnik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-15027 Mohamed M Elhendi and Samar Abdelghany

Chapter 7

#14.00 CONT Motion for an order to show cause re Civil Contempt and for an order holding Creditor LA Catering Truck MFG and its principal Jorge Gomez in Civil Contempt

[fr: 2/25/20, 3/10/20, 4/28/20, 6/30/20]

Docket 11

Tentative Ruling:

Tentative for 9/1/20:

From what the court can determine in this case assigned from Judge Bauer, a settlement was reached after mediation. What remains unclear on this record is why that does not resolve the question. See #15

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Mohamed M Elhendi

Represented By
David Brian Lally

Joint Debtor(s):

Samar Abdelghany

Represented By
David Brian Lally

Movant(s):

Mohamed M Elhendi

Represented By
David Brian Lally

Samar Abdelghany

Represented By
David Brian Lally

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CONT... Mohamed M Elhendi and Samar Abdelghany

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:19-15027 Mohamed M Elhendi and Samar Abdelghany

Chapter 7

#15.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2003 Workhorse, VIN: 5B4KP42R533360171

**LA CATERING TRUCK MFG, INC., AND JORGE GOMEZ
Vs.
DEBTORS**

[fr: 3/10/20, 4/28/20, 6/30/20]

Docket 23

Tentative Ruling:

Tentative for 9/1/20:

It appears that the opposition is primarily concerned with not making relief of stay retroactive. Presumably this is because of the OCS re contempt and tentative settlement. See #14. So, the motion is granted except insofar as annulment retroactive to the petition is sought, which is continued until the results of the mediation settlement can be sorted out.

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Mohamed M Elhendi

Represented By
David Brian Lally

Joint Debtor(s):

Samar Abdelghany

Represented By
David Brian Lally

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CONT... Mohamed M Elhendi and Samar Abdelghany

Chapter 7

Movant(s):

Jorge Gomez

Represented By
Giovanni Orantes

L.A. Catering Truck MFG, Inc.

Represented By
Giovanni Orantes

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#16.00 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 2-06-20)

Docket 0

Tentative Ruling:

Tentative for 9/1/20:

Personal appearance is not required. The hearing will be via ZoomGov. Links have been posted. It appears that nothing has changed since last we met on this subject and the contemnor is as defiant as ever. Interestingly, he apparently now refuses to testify as to the disposition of the money rather than "double down" on any of his previous stories or those reported from his brother. Trustee requests that an inference be drawn from this blanket refusal. The court will hear argument on that point and how it affects continuing contempt. The court took some hope from our last meeting that the debtor actually wanted to testify, to make clear that his impossibility defense had merit. But no, nothing has changed, apparently. But this is also true regarding the pandemic so, absent a violation of furlough terms, the status quo should continue until the earlier of a purging of the contempt or a lifting of the danger from the virus. Set continued status conference date.

Tentative for 2/6/20:
See #12

Tentative for 8/1/19:
See #17

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Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

Tentative for 3/6/18:
No tentative.

Tentative for 1/24/17:

This is the oft-continued hearing for status conferences concerning Kenneth Gharib's ("contemnor"), ongoing contempt, as well as a hearing on his motion late-filed on January 12 as #17 on calendar, styled as: "Notice of Motion and Motion to Dismiss the Sanction Order; Defense of Impossibility to Comply as of January 2017." The court repeats verbatim below the tentative decision from its September 14, 2017 hearings because, regrettably, nothing or almost nothing has changed. For those earlier hearings and conferences the court wrote:

"This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and, in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility

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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).

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

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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

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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 on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid

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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) 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

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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

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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).

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

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CONT... Kenny G Enterprises, LLC

Chapter 7

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 was authorized signer

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Chapter 7

and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

Gharib's "Motion to Dismiss..." filed August 15, 2016 at pp. 4-5

Since the last hearing the Trustee has been unable to find or subpoena Mr. Rushtabadi, Gharib's brother. That a brother would be apparently so indifferent to Mr. Gharib's ongoing incarceration so as to not offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly 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

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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 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.

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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8:11-24750 Kenny G Enterprises, LLC

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#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 2-06-20)

Docket 457

Tentative Ruling:

Tentative for 9/1/20:
See #16.

Tentative for 2/6/20:
See #12

Tentative for 8/1/19:
No tentative.

Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

Tentative for 3/6/18:
No tentative.

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Tentative for 1/24/17:
See #15.

Tentative for 9/14/16:
See #6.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1615956858>

ZoomGov meeting number: 161 595 6858

Password: 655780

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Chapter

Tentative Ruling:

- NONE LISTED -

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8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 5-27-2020)**

Docket 1

Tentative Ruling:

Tentative for 9/2/20:
See #2.

Tentative for 5/27/20:
Status? In view of sale is there any reason to keep this on calendar?

Tentative for 2/26/20:
Continue status conference about 90 days at which time the court expects a decision about whether there is any purpose served by remaining in Ch. 11.

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.

Party Information

Debtor(s):

Barley Forge Brewing Company,

Represented By
M Douglas Flahaut

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8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

#2.00 Debtor's Motion To Dismiss The Case

Docket 147

Tentative Ruling:

Tentative for 9/2/20:
Grant.

Party Information

Debtor(s):

Barley Forge Brewing Company,

Represented By
M Douglas Flahaut
Christopher K.S. Wong

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8:20-10958 Bradley Ray Fox

Chapter 11

**#3.00 STATUS CONFERENCE RE: U.S. Trustee's Motion To Dismiss Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(B)
(set from ustr's mtn hrg. held on 7-22-20)**

Docket 33

Tentative Ruling:

Tentative for 9/2/20:

Bar date is already established. December 31, 2020 is set as deadline to file plan and disclosure statement. Debtor's counsel to lodge a scheduling order. Appearance optional.

Tentative for 7/22/20:

Dismiss or convert, at movant's preference.

Tentative for 7/8/20:

Grant.

Party Information

Debtor(s):

Bradley Ray Fox

Pro Se

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8:19-13480 Andrew L Youngquist and Linda K Youngquist

Chapter 11

**#4.00 Debtors' Motion to Convert Chapter 11 Case To One Under Chapter 7
Bankruptcy**

Docket 75

Tentative Ruling:

Tentative for 9/2/20:
Grant. Appearance optional.

Party Information

Debtor(s):

Andrew L Youngquist

Represented By
Julie J Villalobos

Joint Debtor(s):

Linda K Youngquist

Represented By
Julie J Villalobos

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8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

**#5.00 Post-Confirmation Status Conference Of Chapter 11 Plan
(set from 3-26-20 confirmation hearing)
(re-scheduled from 8-26-20 per court order 7-6-20)**

Docket 38

Tentative Ruling:

Tentative for 9/2/20:
Schedule further post confirmation status conference December 16, 2020 @
10:00 a.m., debtor to give notice. Appearance optional.

Tentative for 3/25/20:
Confirm. See #7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to
implement physical distancing, and pursuant to GO 20-02, telephonic
appearances are mandatory on all matters other than evidentiary hearings.
Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use
CourtCall and free access for parties who do not have an attorney – pro se or self-
represented litigants through April 30, 2020.

Tentative for 2/5/20:
Confirm.

Tentative for 12/11/19:
Approve. Set confirmation dates and other deadlines.

Party Information

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CONT... Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

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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8:17-13089 Cypress Urgent Care, Inc.

Chapter 11

**#6.00 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 8-05-20)**

Docket 118

Tentative Ruling:

Tentative for 9/2/20:
See #7.

Tentative for 8/5/20:
Continue until hearing on final decree.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 4/29/20:
Status?

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CONT... Cypress Urgent Care, Inc.

Chapter 11

Tentative for 3/11/20:
An updated status report would have been useful. When can final decree be anticipated?

Tentative for 3/4/20:
Continue to March 11, 2020 at 10:00AM.

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

#7.00 Debtor's Motion For Entry Of Final Decree Closing Cases

Docket 331

Tentative Ruling:

Tentative for 9/2/20:

Grant, reorganized debtor to submit order. Appearance optional.

Party Information

Debtor(s):

Cypress Urgent Care, Inc.

Represented By
Ashley M McDow
Michael T Delaney
Shane J Moses

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10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#8.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363 (cont'd from 6-30-20)

Docket 7

Tentative Ruling:

Tentative for 9/2/20:
Grant on same terms and conditions pending further hearing November 4 @ 10:00a.m. The court expects a plan will be on file shortly?

Tentative for 6/30/20:
Status? Continue on same terms another 60 days? When can we see a plan?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 5/13/20:
This matter is on calendar because permitted use of cash collateral is set to expire as of the hearing per previous order. Nothing further has been filed as of 5/8. Status? The March MOR shows slightly positive cash flow, so, absent

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CONT... Talk Venture Group, Inc.

Chapter 11

objection, the logical order would seem to be continued authority on same terms and conditions for about 60 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

Debtor filed an amended motion for use of cash collateral on 4/1/20. Unfortunately, this amended motion is likely untimely because there is nearly no time for any other party to respond before the hearing date on 4/8. In any case, the new amended motion does not appear to address Banc of California's objections to continued use of cash collateral. Therefore, the amended motion should be continued to allow creditors, including Banc of California, adequate time to respond. In the meantime, Debtor should answer Banc of California's allegations of misusing cash collateral.

Continue for about two weeks on same terms. Debtor to address Banc Of California's points. Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be

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CONT... Talk Venture Group, Inc.

Chapter 11

arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:

Continue same terms until April 8, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger

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8:20-11611 AEPC Group, LLC

Chapter 11

#9.00 Motion To Approve Compromise With Allegheny Resources, LLC

Docket 62

Tentative Ruling:

Tentative for 9/2/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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8:20-11611 AEPC Group, LLC

Chapter 11

#10.00 Motion Of Debtor In Possession To Extend Period To Assume Or Reject Two Commercial Real Property Leases (1890 W. Oak Parkway, Suite 250, Marietta, GA 30062 & 17731 Cowan, Irvine, CA 92614)

Docket 63

Tentative Ruling:

Tentative for 9/2/20:
Grant extension to December 1, 2020. Debtor to submit order. Appearance optional.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#11.00 STATIS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 8-05-20)**

Docket 1

Tentative Ruling:

Tentative for 9/2/20:
See #12.

Tentative for 8/5/20:
No tentative. See #4.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/27/20:
See #8 and 9.

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CONT... Rosemaria Geraldine Altieri

Chapter 11

Tentative for 4/8/20:

No status report filed? See #12 and #13. Continue to coincide with confirmation hearing. Appearance is optional.

Tentative for 2/5/20:

Continue status conference. Continue approximately 60 days to allow analysis of plan and disclosure statement due 2/28/20.

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.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By

Misty A Perry Isaacson

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8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#12.00 Motion to Use Cash Collateral
(cont'd from 8-05-20)**

Docket 5

Tentative Ruling:

Tentative for 9/2/20:

Continue on same terms and condition through October 14, 2020 to coincide with confirmation hearing.

Tentative for 8/5/20:

This is an oft-continued request for use of cash collateral. As the court recalls, there is only a very marginal slice of equity in the collateral. The court has repeatedly stated (starting in November) that status quo cannot be expected to last indefinitely, and the tentative from last time (5/27) said one last extension would be granted. But the court observes now that somehow confirmation of the plan has moved to September 2. The June MOR shows a dwindling cash balance. To exacerbate the court's concern, no further status report is offered, although Ms. Altieri does file a declaration suggesting that everything is unfolding more or less as expected, with only a temporary lull in rental payments due to the pandemic. Unless the secured creditor is willing to go along further the court sees little encouragement on this record or reason to continue the use beyond September 2. So, despite the court's earlier admonition we should continue on the same basis until the continued confirmation hearing, but further continuances of that date should not be expected and, if sought, had better include the secured creditor's acquiescence as it may be without further use of cash collateral. It probably also goes without saying that the proposed plan should be the very best possible as further time is not assured.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic

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CONT... Rosemaria Geraldine Altieri

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appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/27/20:
see #9. Continue on same terms one final time.

Tentative for 4/8/20:
Continue on same terms pending confirmation hearing. Appearance is optional.

Tentative for 2/5/20:
Continue use on same terms pending continued status conference.

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?

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By

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Rosemaria Geraldine Altieri

Misty A Perry Isaacson

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

Wednesday, September 2, 2020

Hearing Room 5B

11:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

#13.00 Confirmation Of Chapter 11 Plan
(set from 4-08-20 discl stmt hrg)
(cont'd from 8-05-20 per order granting stipulated req. to cont.
confirmation hrg entered 6-26-20)

Docket 66

***** VACATED *** REASON: CONTINUED TO 10-14-20 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUE
CONFIRMATION HEARING ENTERED 8-12-20**

Tentative Ruling:

Tentative for 5/27/20:

This is the hearing on confirmation of debtor's plan. It is opposed in objections filed by two creditors.

A. Bryson

The first objection comes from judgment creditor from Class 2E, Stephanie Bryson ("Bryson"). Bryson obtained a judgment against Debtor in the amount of \$270,658.85. Bryson has liens on two properties located in Massachusetts, the Chandler property and the Adams property. The Chandler property was valued at \$775,000 (though Bryson values it at \$795,000). The Adams property was valued at \$978,300 (Bryson values it at \$1,240,000).

The plan proposes to pay off debt of \$330,386.91 (as of 10/22/19) over a period of 180 months, with monthly "interest only" payments of \$1,376.61, then a balloon payment of \$330,386.91 at the end of the plan.

Bryson argues that the plan does not satisfy the best interest of creditors test. Bryson does not believe that the Debtor's liquidation analysis is accurate, due partly to the undervaluing of the encumbered properties. If Bryson's fair market valuations are used instead of Debtor's, then the result is

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CONT... Rosemaria Geraldine Altieri

Chapter 11

a net positive instead of negative. Bryson concedes that after administrative costs were factored in a chapter 7 liquidation there would still be nothing left for unsecured creditors, whereas the current plan provides for at least some recovery for unsecured creditors. Despite this fact, Bryson argues that the plan still cannot be considered fair and equitable.

Specifically, Bryson argues that the 5% interest rate contemplated in the plan is not adequate to account for the risks involved. Bryson is not a lender and her Massachusetts judgment accrues interest at 12% per year. Bryson asserts that she could foreclose on the Massachusetts properties, which would pay the judgment debt in full. Bryson asserts that the plan also has feasibility issues, and the interest rate must be adjusted to account for that risk.

Bryson asserts that the plan relies on rental income from two properties in Massachusetts. Any unplanned or prolonged vacancy throws the plan into doubt. Furthermore, Bryson asserts that Debtor's financial history suggests that her projected income is optimistic to say the least. The properties are also old and may need repairs over the life of the plan. Those repairs could come at significant cost, which again, would jeopardize the plan. The supplement to the Bryson opposition states that Debtor is including a \$16,000 annual bonus from her employer, Clean Energy. However, it appears that the bonus will be in the form of stock, not cash. Thus, Bryson concludes that the plan is simply not feasible and should not be confirmed. Not raised by Bryson, but of concern to the court, is what happens at the end of 180 months on the balloon? One imagines that the debtor will either refinance or sell, but the prospect of so doing should at least be explained. Interest-only, non-amortizing lien treatments are inherently riskier than fully amortizing. This is because the creditor is never put in a position of comfort on its principal, but always hangs on the precipice. There may be a further complication here in that Massachusetts rate of interest on judgment liens is reported to be 12%, which means that the balance will actually increase over time, unless it is intended that the cramdown rate supplant the state judgment

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Chapter 11

rate. That point needs clarification and briefing.

This is not inherently unconfirmable, but the fundamental precept is that the risks imposed must be fully paid. In the court's view, 5% is too low to accomplish "present value" under §1129(b)(2)(A) considering this point and that Bryson appears to be in second position, with little or no cushion. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Debtor argues for the prime plus approach found in *Till* and argues that *North Valley Mall* is distinguishable. But her argument is not convincing. What is the principled difference between a judgment lien and a defaulted loan? They are both 'allowed secured claims' and that is what the Code requires be given present value if paid over time. Debtor confuses resort to market data to help analyze what is present value (an economic concept informed by data) with the fact that most data available happens to originate in the loan marketplace. That is because lenders consult varied data when deciding whether to extend credit, and many factors such as collateral value and creditworthiness go into the analysis. That is a process done before the fact. But that does not change the fact that both are secured claims being paid over time so their origin seems immaterial *after the fact* where the court in cramdown analysis is asked to make a determination of factors in situations where no real market exists. Even if the court could be persuaded that the *Till* approach (which was after all about a truck loan and seemingly even less relevant) were correct, a 1.75% adjustment is still way too low.

B. U.S. Bank National Association

The real property that is the subject of this Objection is located at 33 Chandler Street, Newton, MA 02458 (the "Property"). Creditor holds a security interest in the Property as evidenced by a Note and Mortgage executed by the Debtor. Said Note and Mortgage are attached to Creditor's proof of claim (the "Proof of Claim") which was filed in the instant case as Claim No. 5-1.

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Chapter 11

The Proof of Claim provides for a secured claim in the amount of \$590,127.29. This amount has increased since the petition date as interest has accrued and Creditor has made post-petition escrow advances to protect its interest in the Property. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. Creditor's claim is treated in the Plan under Class "2B." The Plan provides that the Debtor will pay Creditor's claim the amount of \$590,127.29, over 360 months (30 years) at 4.625% interest, with equal monthly payments of \$3,034.08.

The Plan fails to provide for maintenance of property insurance and timely payment of property taxes. The Plan should specify whether Debtors intend to maintain property insurance and tax payments directly or through establishment of an escrow account with Creditor. Creditor has advanced approximately \$7,597.52 for post-petition property taxes on account of the Property. The Plan does not provide for reimbursing Creditor for such advances which were made post-petition for the benefit of the estate. Such advances qualify as administrative expenses and must be cured on or before the effective date of the plan.

The Plan indicates that the value of the Property is \$775,000.00. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. The plan provides for a total secured claim in the reduced amount of \$590,127.29. As the plan fails to provide for the full amount of Creditor's secured claim, Debtor's Plan cannot be confirmed as is, and the portion that is payable as an administrative claim must be dealt with.

C. Conclusion

The objections raise some good points regarding feasibility. According to Bryson, Debtor's own financial data demonstrate that she will not be able to

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CONT...

Rosemaria Geraldine Altieri

Chapter 11

make good on the plan payments. This plan appears to have a very (perhaps overly) optimistic outlook on Debtor's finances. Further, expenditures that may be necessary are not addressed at all, like insurance, maintenance, and the fact that there may be a \$7597.52 administrative claim.

Debtor points out that Bryson has not provided any analysis as to what the appropriate interest rate would be. Debtor also points out that under the plan, unsecured creditors get at least some recovery, whereas in a liquidation, they would receive nothing. While, of course, the court wants unsecured creditors to get something, this does not substitute for the fact that it is debtor's burden to prove not only feasibility, but that cramdown treatment is providing the present value of the objecting secured claims and that this plan is better than liquidation. This has not been done. Furthermore, Debtor asserts that the First Amended Plan provides that all secured creditors encumbering the Rental Properties will receive deferred cash payments totaling the allowed amount of their claims while retaining their liens on the Rental Properties. But this assertion is devoid of analysis and, on a true present value basis, probably wrong. As Debtor's plan seems to be premised on everything going as planned over the 15 (or even thirty) years of this Chapter 11 plan, with little or no wiggle room, and while not even apparently dealing with all likely expenses, the court requires Debtor to answer Bryson's concerns about feasibility. Given the current economic climate, Debtor should account for the realistic probability of sustained occupancy in the rental properties as well as her own employment prospects.

No tentative. Continue for approximately 30 days to afford one final opportunity to fill in the gaps.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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CONT... Rosemaria Geraldine Altieri

Chapter 11

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

The purpose of a disclosure statement is "to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan." Duff v. U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996). "Adequate information" is defined under 11 U.S.C. Sec. 1125(a)(1) as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interest of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan."

Bryson's objections notwithstanding (though feasibility seems questionable), the DS appears to provide adequate information. It is also worth noting that the DS has not drawn any other opposition. The plan may ultimately not be confirmable if feasibility proves too speculative, as it very well might be given the current economic climate, or if cramdown is attempted and the value of the rental properties is too low as Bryson has alleged, suggesting that creditors will do better in a liquidation (the so-called best interest of creditors test). Debtor will have the burden on these issues in order to achieve confirmation, but at this stage, the DS does not appear deficient from an *information* standpoint, especially with the detailed risk factors analysis.

Grant. Set confirmation date and deadlines.

Appearance is optional.

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CONT... Rosemaria Geraldine Altieri

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Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

**United States Bankruptcy Court
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Thursday, September 3, 2020

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Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1606769885>

ZoomGov meeting number: 160 676 9885

Password: 166242

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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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 8-27-20 at 10:00 a.m. per court)

Docket 83

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUED STATUS
CONFERENCE ENTERED 8-28-20**

Tentative Ruling:

Tentative for 2/27/20:

Status conference continued to May 28, 2020 at 10:00AM. Looks like this case is drifting. Continue one last time.

Tentative for 11/7/19:

See #15 at 11:00AM. Are parties prepared to set deadlines on complaint issues?

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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CONT... Point Center Financial, Inc.

Chapter 7

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

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

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CONT... Point Center Financial, Inc.

Chapter 7

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
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

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CONT... Point Center Financial, Inc.

Chapter 7

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
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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
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**United States Bankruptcy Court
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Thursday, September 3, 2020

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
(con't from 8-27-20 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 8-28-20**

Tentative Ruling:

Tentative for 2/27/20:

Status conference continued to May 28, 2020 at 10:00AM. Some of these cases appear to be drifting. Continue one last time.

Tentative for 12/5/19:

Why no status report?

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

**United States Bankruptcy Court
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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
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Thursday, September 3, 2020

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
(con't from 8-27-20 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-12-20 AT 10:00 A.M.
PER ORDER ON APPLICATION FOR CONTINUANCE OF INITIAL
STATUS CONFERENCE ENTERED 9-02-20**

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 Vogeles
Kathleen J McCarthy
Brendan Loper

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01201 Bagot v. Griffithe

**#4.00 STATUS CONFERENCE RE: Complaint Of NonDischargeability And Exception
From Discharge Of Debts
(cont'd from 3-5-2020)**

Docket 1

Tentative Ruling:

Tentative for 9/3/20:

Continue status conference to August 5, 2021 @ 10:00. Can be advanced by any party on motion.

Tentative for 3/5/20:

See #17

Tentative for 1/16/20:

See #6. The status conference will travel together with any dismissal motions. Appearance not required.

Tentative for 12/19/19:

Status conference continued to January 16, 2020 at 10:00 a.m. to coincide with motion to dismiss.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

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CONT... Guy S. Griffithe

Chapter 7

Defendant(s):

Guy S. Griffithe

Pro Se

Plaintiff(s):

Steven Bagot

Represented By
Heidi Urness

Trustee(s):

Thomas H Casey (TR)

Pro Se

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10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01201 Bagot v. Griffithe

**#5.00 STATUS CONFERENCE RE: Motion For Temporary Abstention
(set at hearing held on 3-5-2020)**

Docket 29

Tentative Ruling:

Tentative for 9/3/20:
See #4.

Tentative for 3/5/20:

This is the Plaintiff's motion for "Temporary Abstention" and for stay of the pending litigation in favor of a proceeding in Washington State Court. Oddly, the motion is not brought for permissive abstention under 28 U.S.C. § 1334(c) but rather under the court's "inherent power to regulate their dockets and should use it to stay litigation pending resolution of another case or arbitration proceeding where it will dispose of or narrow the issues to be resolved in that litigation." *In re Barney's Inc.*, 206 B.R. 336, 343-44 (Bankr. S.D.N.Y. 1997). As near as the court can determine, the standards are largely the same.

It is well established that a federal court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-707, 117 S. Ct. 1636 (1997); see also *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."); *O'Dean v. Tropicana Cruises International, Inc.*,

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CONT... **Guy S. Griffithe**

Chapter 7

1999 WL 335381, *4 (S.D.N.Y. 1999) (federal court suspended action pending disposition of arbitration proceeding); *Evergreen Marine Corp. v. Welgrow International, Inc.*, 954 F.Supp. 101, 103-105 (S.D.N.Y.1997) (authorized stay in federal proceedings pending disposition of related foreign action).

The Ninth Circuit has enumerated factors a bankruptcy court should weigh when it considers whether to permissively abstain from hearing a matter before it. See *Christiansen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990). Those factors include: (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 non-bankruptcy 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 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 non-debtor parties.

Plaintiff cites a less exhaustive five factor analysis for suspending or staying a nondischargeability action as follows: (1) The burden of the proceeding on the defendant; (2)The interest of the plaintiff in expeditiously pursuing the action and prejudice resulting from any delay;(3) The convenience of the court in the management of its cases and the efficient use of judicial resources; (4) The interests of non-parties to the litigation; and (5) The interest of the public in the pending civil and criminal litigation. *In re Government Securities Corp.*, 81 B.R. 692, 694 (Bankr. S.D. Fla. 1987). See

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CONT... Guy S. Griffithe

Chapter 7

also, *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 809 (N.D. Cal. 1989).

Although the parties do not agree on which set of factors is correct, the parties do agree that not all of the above factors are applicable nor are they of equal weight. Plaintiff's most persuasive argument for abstention from this court, and one that Defendant does not dispute, is that Plaintiff and Defendant are already heavily engaged in an action in Washington state court. According to Plaintiff, the allegations in the state court action mirror those of the allegations made in this adversary proceeding. Defendant argues that this is a false assertion as there is no mention of anything in the Washington state court action that mirror Plaintiff's §727 claims, although Defendant does concede that Plaintiff's §523 claims are mirrored by the allegations in the Washington state court action. The Washington state court action was filed over a year ago and is reportedly set for trial in April of 2020. Consequently, it seems feasible for the Washington matter to proceed to trial and judgment on the issues underlying the §523(a) claims (and certain of the §727 theories involving pre-petition behavior). Provided that Plaintiff is careful in obtaining detailed and clear findings, Plaintiff can then resolve this adversary proceeding under collateral estoppel theories by Rule 56 motion. To the extent that Defendant is correct in his assertion that Plaintiff's §727 claims are not mirrored in the state court action, Plaintiff asserts that he will simply drop those claims as they will likely be unnecessary after the state court rules on the underlying claims. Plaintiff has already obtained relief from stay. Considering the resources that the parties have already expended in Washington, including pre-trial motions, discovery, etc., the parties should likely finish what they started up there. This approach would conserve resources here and would not likely result in duplication of effort.

Concerning the administrative law claims and SEC claims pending in Washington State against Defendant, Plaintiff argues that resolution of these claims will help narrow the issues even further or could even provide additional probative details, which Plaintiff argues is a proper justification for

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10:00 AM

CONT...

Guy S. Griffithe

Chapter 7

abstention. Defendant argues that these other cases should not be considered for purposes of abstention because they do not directly involve Plaintiff, but this argument is less compelling because Defendant does not attempt to argue that such litigation would not serve to narrow the issues or provide useful additional background. Defendant's other arguments against abstention, including the recent withdrawal of Defendant's counsel and a vague argument regarding the purported untimeliness of this motion, do not really move the needle in Defendant's favor. Related to the purported untimeliness of this motion is Defendant's argument that this motion is premature because if Defendant's dismissal motion is granted, then this motion becomes essentially moot. Plaintiff notes that Defendant cites no authority for the proposition that dismissal of the complaint would also end the Washington state court action. Defendant's argument also ignores that complaints after Rule 12 motions can be (and very likely would be) amended if they are found to be defective.

In sum, Plaintiff has made a persuasive case for staying proceedings in this court and allowing the parties to litigate what are largely matters of state law in Washington state court, especially since the parties are on the doorstep of trial. Thus, as Plaintiff urges, the court should use its power under §105(a) to temporarily abstain or stay this adversary proceeding pending resolution in Washington state court. Plaintiff is cautioned to obtain clear and dispositive findings on the operative issues such that collateral estoppel can govern in subsequent Rule 56 motion.

Grant abstention. This adversary proceeding is stayed until Plaintiff seeks to return for a Rule 56 motion. The court will schedule a status conference approximately 180 days out for evaluation.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

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CONT... Guy S. Griffithe

Chapter 7

Defendant(s):

Guy S. Griffithe

Pro Se

Movant(s):

Steven Bagot

Represented By
Heidi Urness
Richard H Golubow
Peter W Lianides

Plaintiff(s):

Steven Bagot

Represented By
Heidi Urness
Richard H Golubow
Peter W Lianides

Trustee(s):

Thomas H Casey (TR)

Pro Se

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10:00 AM

8:18-11155 Kenneth David Bishop

Chapter 7

Adv#: 8:20-01032 Marshack v. Foster

#6.00 STATUS CONFERENCE RE: Complaint for: 1. Avoidance and Recovery of Preferential Transfer; 2. Avoidance and Recovery of Intentional Fraudulent Transfer and; 3. Avoidance and Recovery of Constructively Fraudulent Transfer
(con't from 8-27-20 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER GRANTING APPLICATION TO CONTINUE STATUS
CONFERENCE ENTERED 8-31-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth David Bishop

Represented By
Leonard M Shulman

Defendant(s):

Hal Foster

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
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Thursday, September 3, 2020

Hearing Room 5B

10:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

**#7.00 STATUS CONFERENCE RE: Complaint For: I. Turnover 11 U.S.C. Sec. 542 & 543; II. Avoidance 11 U.S.C. Sec. 544; III. Avoidance 11 U.S.C. Sec. 548; IV. Liability 11 U.S.C. Sec. 550; V. Avoidance 11 U.S.C. Sec. 549; VI. Sale Of Property 11 U.S.C. Sec 363(h); VII. Avoidance 11 U.S.C. Sec. 547
(con't from 8-27-20 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 9/3/20:

It appears that the case is not yet at issue with response of certain parties still awaited. Continue to Nov. 12 @ 10:00 a.m. Plaintiff to give notice to all parties who have or will respond.

Tentative for 6/25/20:

Continue approximately 60 days to allow service to be effected.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jee Hyuk Shin

Pro Se

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CONT... Jee Hyuk Shin

Chapter 7

Defendant(s):

Jee Hyuk Shin	Pro Se
GODDO SAVE	Pro Se
Jae Shin	Pro Se
Bang Shin	Pro Se
Jeemin Shin	Pro Se
Mini Million Corporation	Pro Se
Theodore Ebel	Pro Se
Mojerim, Inc.	Pro Se
Insook Shin	Pro Se
Seafresh Restaurant	Pro Se

Plaintiff(s):

Richard A Marshack	Represented By Anerio V Altman
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Trustee(s):

Richard A Marshack (TR)	Represented By Anerio V Altman
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**United States Bankruptcy Court
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10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01093 Romex Textiles, Inc. v. Kim

**#8.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of a debt and objection to discharge
(case reassigned from Judge Catherine E. Bauer per admin order 20-07 dated 7-15-20)**

Docket 1

Tentative Ruling:

Tentative for 9/3/20:

Per request, continued to December 3 @ 10:00 a.m. Plaintiff to give notice.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Defendant(s):

Katie Ki Sook Kim

Pro Se

Plaintiff(s):

Romex Textiles, Inc.

Represented By
Nico N Tabibi

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

Adv#: 8:20-01097 AEPC Group, LLC v. SLATE ADVANCE

- #9.00 STATUS CONFERENCE RE: Complaint For:**
1. Declaratory Relief;
 2. Usury;
 3. Injunction;
 4. Avoidance of Preferential Transfers;
 5. Avoidance of Lien and Equitable Subordination;
 6. Avoidance and Preservation of Lien Claims;
 7. Avoidance of Fraudulent Transfers;
 8. Avoidance of Fraudulent Transfers;
 9. Value of Assets and Extent of Lien;
 10. Disallowance of Claim;
 11. Unconscionability;
 12. California Business & Professions Code Section 17200 ET SEQ.;
 13. Negligence Per Se-Violation of California Finance Lending Law;
 14. Violation of New York General Business Law Section 349
- (con't from 8-27-20 at 10:00 a.m. per court)**

Docket 0

Tentative Ruling:

Tentative for 9/3/20:
Continue to October 29, 2020 @ 10:00 a.m.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

Defendant(s):

SLATE ADVANCE

Pro Se

Plaintiff(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
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CONT... AEPC Group, LLC

Chapter 11

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10:00 AM

8:20-10987 Guadalupe E Marquez Cid

Chapter 7

Adv#: 8:20-01098 United States Trustee v. Marquez Cid

#10.00 STATUS CONFERENCE RE: Complaint Objecting to the Discharge.

Docket 1

Tentative Ruling:

Tentative for 9/3/20:

Party Information

Debtor(s):

Guadalupe E Marquez Cid

Represented By
Daniel King

Defendant(s):

Guadalupe E Marquez Cid

Pro Se

Plaintiff(s):

United States Trustee

Represented By
Nancy S Goldenberg

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room

5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

**#11.00 STATUS CONFERENCE RE: Adversary Complaint for Declaratory Relief
(con't from 8-27-20 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 9/3/20:

It would appear there are several preliminary questions concerning jurisdiction and proper venue. It makes sense to sort these out first before discovery commences and deadlines are imposed. Consequently, the status conference will be continued to December 10, 2020 @ 2020. In meantime, the parties are ordered to file such motions as are necessary and appropriate to resolve the questions about proper venue and /or withdrawal of reference. By the continued status conference the court expects those issues to be resolved.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Pro Se

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Pro Se

Ditech Financial, LLC

Pro Se

SELECT PORTFOLIO

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... BP Fisher Law Group, LLP
BP Peterman Legal Group, LLC

Pro Se

Chapter 7

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, September 3, 2020

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

**#12.00 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 3-12-20)
(con't from 8-27-20 at 10:00 a.m. per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-05-20 AT 10:00 A.M.
PER ORDER RE: STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE ENTERED 8-10-20**

Tentative Ruling:

Tentative for 3/12/20:

First, why the very late status report? Filing less than 2 days before the status conference not only violates the LBRs, it is an affront and imposition upon the court. Be prepared to discuss the suitable amount of sanctions.

Status conference continued to July 2, 2020 at 10:00AM.

Deadline for completing discovery: May 30, 2020

Last date for filing pre-trial motions: June 22, 2020

Pre-trial conference on:

Joint pre-trial order due per local rules.

Tentative for 2/27/20:

Is this resolved? Dismiss?

Tentative for 1/9/20:

See #3

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CONT... Catherine M Haretakis

Chapter 11

Tentative for 12/19/19:
See #2.1

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.

Party Information

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
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10:00 AM

8:12-17406 Matthew Charles Crowley

Chapter 7

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

#13.00 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8) (cont'd from 7-02-20 per order on stip. to continue pre-trial conf. entered 6-30-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-08-20 AT 10:00 A.M.
PER ORDER ON PRE-TRIAL CONFERENCE ENTERED 8-17-20**

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

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11:00 AM

8:08-10789 Kelly Owen

Chapter 7

Adv#: 8:08-01191 Wiese v. Owen et al

#14.00 Order To Show Cause Why Adversary Proceeding Should Not Be Closed
RE:Complaint false pretenses, false representation, actual fraud)) ,(68
(Dischargeability - 523(a)(6), willful and malicious injury))

Docket 1

Tentative Ruling:

Tentative for 9/3/20:

Adversary case dismissed. Court will prepare the order.

Party Information

Debtor(s):

Kelly Owen

Represented By
Gary Leibowitz
David Brian Lally

Defendant(s):

Kelly Owen

Pro Se

Plaintiff(s):

Cindy Wiese

Represented By
Christopher G Weston

Trustee(s):

John M Wolfe (TR)

Represented By
John M Wolfe

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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01041 Marshack v. West Coast Business Capital LLC et al

#15.00 Defendant's West Coast Business Capital, LLC's Motion To Dismiss 12(b)(1)(6) (cont'd from 8-13-20 per order approving stip. to cont. motion to dismiss entered 7-30-20)

Docket 27

Tentative Ruling:

Tentative for 9/3/20:

Given that the Trustee intends to amend, and that even if the motion was granted it would almost certainly be with leave to amend, it seems the better part of valor is to simply continue the dismissal motion briefly, say 30 days, with the expectation that an amended complaint will likely be filed.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Represented By
Michael W Davis

Vernon Capital Group LLC

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

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5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#16.00 Defendant EBF Partners, LLC's Motion to Dismiss Complaint For Failure To State A Claim For Relief And For More Definite Statement
(cont'd from 7-23-20 per order approving stip. to cont. mtn to dismiss entered 7-20-20)

Docket 79

***** VACATED *** REASON: CONTINUED TO 11-05-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT EBF PARTNERS, LLC TO CONTINUE HEARING ON
MOTION TO DISMISS ENTERED 8-24-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

Yes Funding Corp., a New York

Pro Se

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CONT... i.i. Fuels, Inc. Chapter 7

Atlas Acquisitions, LLC, a New	Pro Se
Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe
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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#17.00 Motion To Dismiss Complaint Against CapCall, LLC, Pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6)
(cont'd from 8-06-20 per order approving stip. between plaintiff and defendant capcall, llc to cont. hrg. on mtn to dsm entered 7-23-20)

Docket 120

Tentative Ruling:

Tentative for 9/3/20:

Given that the Trustee intends to amend, and that even if the motion was granted it would almost certainly be with leave to amend and considering that the tentative on the Rule 21 severance motion is to grant, it seems the better part of valor is to simply continue the dismissal motion briefly, say 30 days, with the expectation that amended and/or separate complaints will likely be filed.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut
Annie Y Stoops

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

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11:00 AM

CONT... i.i. Fuels, Inc. Chapter 7

NEXGEN Capital Limited Liability	Pro Se
Queen Funding LLC, a New Jersey	Pro Se
Yes Funding Corp., a New York	Pro Se
Atlas Acquisitions, LLC, a New	Pro Se
Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe Rafael R Garcia-Salgado
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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#18.00 Motion to Sever Claims Pursuant to FRCP 21 and FRBP 7021

Docket 160

Tentative Ruling:

Tentative for 9/3/20:

This is a motion to sever pursuant to Fed. R. Civ. P. 21 brought jointly by Defendants, Mantis Funding LLC ("Mantis"), CapCall, LLC ("CapCall") and Forward Financing LLC ("Forward Financing") (collectively "Movants"). The motion is opposed by Richard Marshack ("Trustee"), the chapter 7 trustee for Debtor, i.i. Fuels, Inc. ("Debtor").

1. Background

As related by Movants, on March 25, 2020, Plaintiff filed the Complaint, which pertains to several separate transactions with the Debtor. Illustrating the separate nature of the transactions, in the Complaint factual allegations against Mantis effectively amount to a single discrete paragraph (Paragraph 55), which describes an August 2017 Merchant Cash Advance by which Mantis paid to Debtor \$125,000 in exchange for purchasing a specified amount of the Debtor's future receivables. The allegations against CapCall boil down to a different single paragraph (Paragraph 57), which alleges that CapCall paid to Debtor \$300,000 as part of a merchant cash advance. And the Complaint's factual allegations against Forward Financing are confined to two other different paragraphs (Paragraphs 53 and 54) alleging that it entered into agreements with Debtor for multiple cash advances.

There are no facts in the Complaint alleging that any of the three Movants had any connection or relationship with any of the other defendants or with each other. All three Movants are represented by separate counsel. Mantis and Forward Financing separately answered the Complaint. (Dkt. Nos.

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CONT...

i.i. Fuels, Inc.

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53, 92.) CapCall filed a motion to dismiss the claims against it (Dkt. No. 120), which is currently scheduled to be heard on September 3, 2020. (Dkt. No. 138.)

The other defendant to have appeared is EBF, which filed a motion to dismiss, but which also continued the hearing on its motion to September 3, 2020 to facilitate settlement discussions. (Dkt. No. 136.) The Court also has ordered, pursuant to a stipulation between Plaintiff and EBF, that discovery as to EBF "shall be stayed and tolled pending resolution" of EBF's motion to dismiss or further order of the Court. (Id.) Of the remaining defendants, seven are in default, and Plaintiff moved for default judgments against six of those, which motions the Court granted on July 30, 2020.2 (Dkt. Nos. 57-70.) The claims against Corefund Capital, LLC have been dismissed without prejudice. On July 10, 2020, Plaintiff filed four separate and unrelated Rule 7016 Joint Status Reports for each of the Moving Defendants as well as EBF. (Dkt. Nos. 126-129.) In their respective Joint Status Reports, Mantis, EBF, and CapCall sought or raised the issue of severance. At the Status Conference on July 23, 2020, the Moving Defendants again explained that the claims against each of them should be severed into independent adversary proceedings. Plaintiff opposes the request but does not articulate any specific reason or basis for why claims regarding separate transactions with separate defendants should be lumped together into one combined action, thus necessitating this Motion.

2. Legal Standards

Fed. R. Civ. P 21, made applicable to these proceedings by Federal Rule of Bankruptcy Procedure 7021, provides that "[o]n motion or on its own, the court may at any time on just terms, add or drop a party. The court may also sever any claim against a party." When considering a motion to sever under Rule 21, courts in the Ninth Circuit consider (a) whether the right to relief asserted by the plaintiff arises out of the "same transaction, occurrence, or series of transactions or occurrences," and (b) whether "there are common questions of law or fact." *Coughlin v. Rogers*, 130 F.3d 1348, 1350-51 (9th

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CONT...

i.i. Fuels, Inc.

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Cir. 1997) (granting motion to sever where "trial efficiency will not be promoted by allowing [multiple plaintiffs] to bring a single case" because "[e]ach claim raises potentially different issues, and must be viewed in a separate and individual light by the Court"); see also *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (upholding district court's decision to grant defendant's motion to sever claims). The phrase "transaction or occurrence" refers to "similarity in the factual background of a claim"; claims that 'arise out of a systematic pattern of events' arise from the same transaction or occurrence." *Bautista v. Los Angeles County*, 216 F.3d 837, 842-43 (9th Cir. 2000) (Reinhardt, J., concurring) (quoting *Coughlin*, 130 F.3d at 1350).

"Rule 21 applies when either (1) the claims asserted by or against the joined parties do not arise out of the same transaction or occurrence or (2) do not present some common question of law or fact." *Winner's Circle of Las Vegas, Inc. v. AMI Franchising Inc.*, 916 F. Supp. 1024, 1029 (D. Nev. 1996) (emphasis added); see also *Jonas v. Conrath*, 149 F.R.D. 520, 523 (S.D. W. Va. 1993) ("While Rule 21 is silent on the standard applicable for determining misjoinder, 'courts have uniformly held that parties are misjoined when they fail to satisfy either of the preconditions for permissive joinder of parties set forth in Rule 20(a).'" (emphasis added)) (quoting *Breton v. Commcn's Satellite Corp.*, 116 F.R.D. 162, 163 (D.D.C. 1987)). Bankruptcy courts may consider the following factors: (1) whether claims arise out of the same transaction or occurrence; (2) whether claims present some common questions of law or fact; (3) whether settlement of claims or judicial economy would be facilitated; (4) whether prejudice will be avoided if a severance is granted; and (5) whether different witnesses and documentary proof are required for the separate claims. See *In re Last*, 440 B.R. 642, 654 (Bankr. D.N.J. 2010) (applying test adopted by the U.S. District Court for the Southern District of New York).

3. The Claims Should Be Severed

Movants make compelling arguments in favor of severing the claims

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because they persuasively demonstrate that the claims against the individual defendants do not arise from the same transaction or occurrence, or series of transactions or occurrences. Specifically, Trustee is attempting to recover amounts allegedly discretely transferred by Debtor to each of the three Moving Defendants pursuant to three completely separate agreements, with completely separate terms, that were entered into at different times for different reasons and pursuant to different documentation and applications. Moreover, Movants argue that the alleged transactions with each defendant are different, and the terms of each Movant's separate agreements with Debtor would involve entirely different testimonial and documentary evidence, with different witnesses, custodians, and legal issues, including whether (as Plaintiff contends) any of the various transactions were loans. And, Movants argue, as the motion-to-dismiss briefing already on file illustrates, there are different choice-of-law disputes as to each separate defendant's transactions with the Debtor.

Furthermore, Movants persuasively argue that Trustee's own conduct is tantamount to an admission that severance is appropriate. For example, Plaintiff conducted separate Rule 7026 conferences prior to the scheduling conference with the Court, then filed four independent and unrelated Rule 7016 Joint Status Reports (Dkt. Nos. 126-129), and even sought independent default judgments against still other defendants who also have no alleged connection to the four defendants that have appeared to defend against Plaintiff's claims.

Movants concede that Plaintiff has the same general theory that all the transactions are actually loans, but Movants argue that a similar theory is not enough to warrant joining all the defendants together, for it is settled that "the mere fact that . . . claims arise under the same general law does not necessarily establish a common question of law or fact." *Coughlin*, 130 F.3d at 1351. To illustrate the point, Movants analogize the complaint to a slip-and-fall situation wherein a person slips and falls in three different stores, on three different days then files one complaint against all three stores. Movants point

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out that there would be different surrounding circumstances, evidence, witnesses, etc. to be put forth at a trial. A single trial would be a messy and inefficient use of resources. Thus, Movants conclude, the motion is amply supported by good cause.

Trustee's opposition seems to focus on the inconvenience of holding separate trials. After all, Trustee asserts, the claims are actually not all that different, and would include some overlapping facts, documents, and witnesses. Trustee asserts that it would be inconvenient for certain witnesses to have to make appearances at separate trials especially when their testimony might be substantially similar in the different trials. Trustee also asserts that having one larger trial would be more efficient and more conducive to a settlement.

Movants and Trustee both insist that their preferred course would lead to more efficient use of resources. However, the court is persuaded by Movants' assertion that severance will promote settlement of claims and judicial economy because separate actions with focused and narrower discovery will accelerate the exchange of information and legal positions and may (hopefully) lead to informal resolution. The court is not persuaded that single longer trial will have this same effect. The court generally prefers smaller trials with narrow issues to a single mega-trial with multiple parties, different evidence, different witnesses, etc. It is not difficult to imagine how confusing that could become. Additionally, it seems likely that some Defendants would be forced sit idly for significant periods while Trustee attempted to prove each claim against each of the other separate defendants, which is not an efficient use of time or resources. Finally, the court is sympathetic to the Movants' concern over undue prejudice including (i) sitting in on numerous unnecessary group depositions involving alleged transactions that are wholly unrelated to anyone other than the deposed defendant; and (ii) significantly heighten the risk of exposing proprietary and confidential information to other defendants, who are competitors.

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In sum, the court is well-satisfied that Movants have made persuasive arguments in favor of granting the Rule 21 motion.

Grant

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis
Megan Oneill

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut
Annie Y Stoops

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

Yes Funding Corp., a New York

Pro Se

Atlas Acquisitions, LLC, a New

Pro Se

Capital Stack Fund II LLC, a

Pro Se

New Era Lending, a California

Pro Se

Arch Capital Advisors, Inc., a

Pro Se

CoreFund Capital, LLC, a Texas

Represented By

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Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack

Represented By
Rafael R Garcia-Salgado
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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2:00 PM

8:17-12406 Elmer Clarke

Chapter 7

Adv#: 8:17-01245 Little v. Clarke

**#19.00 PRE-TRIAL 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)]
(set from s/c held on 3-12-20)
(continued from 8-27-2020 at 2:00 p.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 9/3/20:
See #20.

Tentative for 7/2/20:

Frustrating. This is scheduled as a pretrial conference yet no joint pretrial stipulation is seen although it is required under the LBRs and was the topic of specific warnings given last time. All we have is a somewhat lame "status report" from plaintiff that reports settlement attempts were rebuffed. This is not acceptable and is not an excuse. The lack of progress is doubly concerning since the court is informed that a state court judgment which was to be basis for a Rule 56 motion to be brought by plaintiff has been finally resolved after appeal for months now. So, why no motion? No joint stimulation? Nothing. Defendant has moved to dismiss for these failures. The court will hear argument.

No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 3/12/20:
Status?

Tentative for 9/5/19:
Why no status report? Status of state court matter?

Tentative for 4/11/19:
Why no status report? Status of state court matter?

Tentative for 10/11/18:
Does plaintiff agree that a further delay pending appeal is the best course?

Tentative for 3/8/18:
Why no status report?

Party Information

Debtor(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

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Defendant(s):

Elmer Clarke

Pro Se

Plaintiff(s):

Katie L. Little

Represented By
R Grace Rodriguez

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:17-12406 Elmer Clarke

Chapter 7

Adv#: 8:17-01245 Little v. Clarke

#20.00 Motion to Dismiss Adversary Proceeding Brought By Katie Little Without Prejudice For Want Of Prosecution Against Elmer Clarke

Docket 29

Tentative Ruling:

Tentative for 9/3/20:

The court is not happy with parties, like Ms. Little, that wait until the very last minute to file responses that were by the local rules due two weeks ago. This was on top of previous inexplicable delays. Even though the court prefers to decide matters on their merits, the delays here are extreme and unjustified. The court will hear argument as to whether, notwithstanding, leniency should be given. No tentative.

Party Information

Debtor(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

Defendant(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

Plaintiff(s):

Katie L. Little

Represented By
R Grace Rodriguez

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1607725766>

ZoomGov meeting number: 160 772 5766

Password: 102684

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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8:20-12145 Yaneth Patricia Barraza Romero

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**ALI AFGHANI
Vs.
DEBTOR**

Docket 8

***** VACATED *** REASON: OFF CALENDAR - A NOTICE OF
TAKING ALI AFGHANI'S MOTION FOR RELIEF FROM THE
AUTOMATIC STAY OFF CALENDAR FILED 8-25-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yaneth Patricia Barraza Romero

Represented By
Marlin Branstetter

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:18-13236 Chad James Carter and Terah Rose Carter

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**FIFTH THIRD BANK, N.A.
Vs.
DEBTORS**

Docket 73

Tentative Ruling:

Tentative for 9/8/20:

If the debtors are current per the plan, the motion will be denied. The court lacks sufficient evidence to make that determination on this record. However, post confirmation defaults will not be tolerated. If that proves correct the motion will be granted absent an APO.

Party Information

Debtor(s):

Chad James Carter

Represented By
Joseph A Weber
Fritz J Firman
Amelia Puertas-Samara

Joint Debtor(s):

Terah Rose Carter

Represented By
Joseph A Weber
Fritz J Firman

Movant(s):

Fifth Third Bank, N.A.

Represented By
Kirsten Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-11632 Marta Escalante

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTOR

Docket 9

Tentative Ruling:

Tentative for 9/8/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Marta Escalante

Represented By
Brad Weil

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:20-12195 James Mathew Assali

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**ACAR LEASING LTD d/b/a GM FINANCIAL LEASING
Vs.
DEBTOR**

Docket 10

Tentative Ruling:

Tentative for 9/8/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

James Mathew Assali

Represented By
Brian J Soo-Hoo

Movant(s):

ACAR Leasing LTD d/b/a GM

Represented By
Sheryl K Ith

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:16-13256 Ann Marie Rees

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-28-20)

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 44

Tentative Ruling:

Tentative for 9/8/20:
Grant absent APO.

Tentative for 7/28/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Ann Marie Rees

Represented By
Barbara J Craig

Movant(s):

Wells Fargo Bank

Represented By
April Harriott
Matthew R. Clark III
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTORS**

Docket 60

Tentative Ruling:

Tentative for 9/8/20:
Post confirmation defaults are not tolerated, but the court cannot determine that question on this record. Grant absent APO.

Party Information

Debtor(s):

Froilan Namin Cabarles

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Liza Fajardo Cabarles

Represented By
Hasmik Jasmine Papian

Movant(s):

Deutsche Bank National Trust

Represented By
Austin P Nagel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-13016 Philip Q Dowsing

Chapter 13

#7.00 Motion for Relief From The Automatic Stay REAL PROPERTY
(cont'd from 8-04-20)

WELLS FARGO BANK

Vs.

DEBTOR

Docket 43

Tentative Ruling:

Tentative for 9/8/20:
Grant. Appearance is optional.

Tentative for 8/4/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Philip Q Dowsing

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-13608 Darren Dean McGuire

Chapter 7

#8.00 Motion for: (1) Approval of the Settlement between the Trustee and Darren Dean McGuire; and (2) an Order Revoking any Technical Abandonment of the Broker Claims
(cont'd from 8-11-20 per order approving sixth stip. to cont. hrg re: mtn to approve trustee's compromise with debtor entered 8-07-20)

Docket 118

Tentative Ruling:

Tentative for 9/8/20:
Grant.

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
Jason B Komorsky

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8:18-13608 Darren Dean McGuire

Chapter 7

#9.00 Trustee's Notice of Motion and Motion to Approve Compromise Under Rule 9019 Trustee's Notice of Motion and Motion to Approve Global Compromise Between Trustee, Debtor Darren Dean McGuire, Jeffrey R. Wilson, WIBA Insurance Agency, Inc., and Kevin Ogar

Docket 163

Tentative Ruling:

Tentative for 9/8/20:
Grant.

Party Information

Debtor(s):

Darren Dean McGuire

Represented By
Dean G Rallis Jr
Matthew D Pham

Movant(s):

Jeffrey I Golden (TR)

Represented By
Steven T Gubner
Michael W Davis
Jason B Komorsky

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Steven T Gubner
Michael W Davis
Jason B Komorsky

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8:19-12052 Deborah Jean Hughes

Chapter 7

#10.00 Trustee's Motion For Order: Authorizing Sale Of Litigation Rights (A) Outside The Ordinary Course Of Business; (B) Free And Clear Of Liens; (C) Subject To Overbids; And (D) For Determination Of Good Faith Purchaser Under Section 363(M)

Docket 117

***** VACATED *** REASON: CONTINUED TO 9-22-20 AT 11:00 A.M.
PER ORDER ON STIPULATED REQUEST TO CONTINUE THE
HEARING DATE FOR THE TRUSTEE'S MOTION FOR ORDER
AUTHORIZING SALE OF LITIGATION RIGHTS (1) OUTSIDE OF
ORDINARY COURSE OF BUSINESS; (B) FREE AND CLEAR OF LIENS;
ENTERED 8-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:19-14518 Ashley Dawn Conrad

Chapter 13

#10.10 Creditor's Motion For Order Approving: (1) Settlement Agreement With Debtor Ashley Dawn Conrad; And (2) Approving Form Of Settlement Agreement **(cont'd from 9-01-20)**

Docket 57

Tentative Ruling:

Tentative for 9/8/20:
We still have not heard from the trustee? Status?

Tentative for 9/1/20:
Have we heard from the Chapter 7 trustee? The court is not going to approve a settlement calling, effectively, for a dismissal absent the trustee commenting.

Tentative for 8/19/20:
Was the case converted to Chapter 7? Should same tentative be adopted, or simply go off calendar?

Tentative for 7/15/20:

Creditor AI Hassas/Sweet Lemons, LLC ("Creditor") moves for an order approving a Settlement Agreement between Creditor and Debtor in the voluntary chapter 13 case. The approval of this motion would result in the dismissal of the Debtor's chapter 13 bankruptcy. Trustee filed an opposition

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on 6/25/20. Trustee argues that the Settlement Agreement, if approved, should not involve dismissal of the chapter 13 and all payments should be disbursed by the Trustee. Additionally, Trustee requests the Creditor amend their proof-of-claim in accordance with the agreement and Debtor amend the plan to establish the appropriate class or subclass for treatment of the creditor in accordance with the agreement.

On 7/1/2020, Debtor filed a reply to the opposition. She argues the conditions requested by the Trustee would only result in a default on the Settlement Agreement. The agreement states a third-party has agreed to pay the monthly payment straight to the Creditor. Debtor argues if the payments must go through the Trustee for distribution to the Creditor there is too much room for error and the possibility of default is much higher, thus, putting a greater burden on the Debtor. Additionally, Debtor argues if the payments are made to the Trustee this would structurally alter the terms of the agreement and since the payments go beyond the five-year term of the bankruptcy plan, the Trustee could not fully satisfy the entirety of the agreement transitioning it into default.

Creditor and Debtor filed replies to the Trustee's opposition arguing that the *Jevic*-like settlement in contrast does not violate the priority scheme set forth in the Bankruptcy Code. See *Czyzewski v. Jevic Holding Corp.* 137 S. Ct. 973, 979 (2017). Additionally, they argue settlement would allow for the Debtor to begin a "fresh start" moving forward after dismissal. Finally, Creditor argues every prong in the four-prong fair classification test found in *In re Benner*, 146 B.R. 265, 266 (D. Montana 1992) has been satisfied. But *Benner* is a separate classification case, not a dismissal case.

Under 11 U.S.C § 105, the court holds the power over the case to approve, dismiss, or deny the motion to approve Settlement Agreement. Here, the motion falls within the scope of § 105 and the court holds power over this action. FRBP 9019 allows for the compromise or settlement of claims and controversies by the Creditor, Debtor, and Trustee following notice

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and a hearing. In order for the court to approve a proposed settlement the court should consider the following factors, as discussed in *In re Woodson*: 839 F.2d 610,620 (9th Cir. 1988), citing *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir.), *cert. denied sub nom. Martin v. Robinson*, --- U.S. ----, 107 S. Ct. 189, 93 L. Ed. 2d 122 (1986).

"(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises."

Here, (a) the probability of success in the Creditor's allegedly nondischargeable claim against the Debtor should be regarded as high. This would further burden the Debtor and have the likelihood of never creating an effective reorganization plan; (b) the agreement between the parties has taken place over that last several months with a full merger clause and understanding of each parties' obligations. The Debtor has secured a third-party, who has agreed to the terms and will satisfy all the required payments. (c) The complexity of the situation is straightforward enough. Debtor lost a civil suit to the Creditor who holds the majority debt against the Debtor. The cost of litigation would significantly decrease the total amount in the estate, diminishing the ability to pay not only the Creditor as agreed but any remaining unsecured claims.

But the main issue arises under the last *Woodson* factor: "the paramount interest of the creditors . . ." that is *creditors*, plural. The agreement is solely between the Debtor and one Creditor. It fails to take into consideration or even discuss any other creditors who must be treated within the reorganization plan. Understandably, Creditor holds almost 90% of the total debt, but all other creditors must also be considered when approving such a motion, particularly one involving a dismissal. Approving the Settlement Agreement should be a compromise which is "fair and equitable"

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to *all parties involved*. (italics added) *In re A & C Properties*, 784 F.2d at 1381. The agreement focuses solely on questions of Creditor's and Debtor's concerns but fails to consider at all any other creditors.

The court is not indifferent to the Debtor's fresh start nor to her difficulty in handling a non-dischargeable obligation, nor is the court indifferent to the administrative cost savings to the reorganization effort. All are good points, but the movants fail to convince that these points cannot be handled within the context of a Chapter 13 plan. The fact that payments might continue past the five years is hardly an insuperable impediment. The plan can acknowledge the non-dischargeable nature of the obligation and acknowledge that at the end of term the payments will have to go on since the discharge otherwise generally applicable under the plan will not affect this obligation. The Trustee need not be involved after the end of the term. So, no good reason is given to abandon all other creditors in order to further the convenience of just two parties.

Deny as requested. Suggest continuance for re-draft.

Party Information

Debtor(s):

Ashley Dawn Conrad

Represented By
Matthew D. Resnik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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11:00 AM

8:19-15027 Mohamed M Elhendi and Samar Abdelghany

Chapter 7

#11.00 Debtor's Motion To Approve And Enforce Agreed-Upon Term Sheet Signed By All Parties And Counsel At the Court-Ordered Mediation

Docket 95

Tentative Ruling:

Tentative for 9/8/20:

The Debtors are Mohamed Elhendi and his spouse, Samar Abdelghani ("Debtors"). This is their motion to approve and enforce the agreed-upon term sheet signed by all parties and counsel at the court-ordered mediation. The motion is opposed by Creditors, Jorge Gomez and L.A. Catering Truck MFG ("Creditors").

As far as the court can tell, aside from whether the Term Sheet represented a meeting of the minds (at least at the time it was drafted), the following facts are not contested:

The Debtors filed this Chapter 7 Bankruptcy Case on December 30, 2019. Prior to the filing, a debt had been incurred to Creditor LA Catering Truck MFG, pursuant to a lease agreement between the Debtor Elhendi and Creditor LA Catering Truck MFG dated April 18, 2019. The debt is listed on Schedule "D" of the Debtor's Petition. This debt was secured by a commercial "Food Truck" known as a 2003 WORKH ("Property"). The Property was used full time by the Debtor in his food truck business; at the time Elhendi used a fictitious business name "Kebabology." After the debt but before the petition, the Debtor transferred the Property to his limited liability company, Yansico, LLC, of which he is the managing member (and perhaps the only member, the record is unclear).

Three weeks after the Debtors filed their Petition and after Creditors

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were allegedly on notice of the Petition, on January 20, 2020, Creditors allegedly engaged in improper collection against the Debtor without first seeking and obtaining relief from the automatic stay by repossessing the Property.

The Debtors filed a Motion for Contempt of Court against Creditors alleging intentional violation of the automatic stay. Creditors filed a Motion to Annul the stay. Both hearings have been continued multiple times and are also on this calendar as #s 11.1 and 11.2. At Judge Bauer's urging, the Parties agreed to Mediation to resolve both issues, and attended a mediation session with the Hon. Meredith Jury, Ret., on July 29, 2020. Four people attended the Mediation: Debtor Mohamed (for himself and his wife) along with his attorney, and Creditors and their attorney. At the Mediation an ostensible agreement was reached, and a Term Sheet was signed by all parties and counsel. After the Mediation, Creditors' Counsel sent the Settlement Agreement to the Debtors' Counsel. However, the Settlement Agreement adds a Party to the Term Sheet, Yasinco, LLC, to which the Debtors object.

This is an unfortunate case where the sides each have no confidence that the other side is dealing in good faith. The court does not know exactly what to make of the asserted facts. For example, Debtor asserts that making Yasinco, LLC a party to the Settlement Agreement was never even once brought up in the course of the mediation. This is not expressly disputed by Creditors, but Creditors do persuasively argue that Debtor Elhendi is the managing member of Yasinco, LLC, Yasinco was the entity in reported title and possession and so arguably the party aggrieved, and so it should have been obviously understood that the Settlement Agreement would include the LLC.

Neither side cites any particularly persuasive authority that assists the court in determining the more righteous position. For example, Creditors cite *Copeland v. Baskin Robbins U.S.A.*, 96 Cal. App. 4th 1251, 1257 (2002) for the proposition that "[i]f, despite their good faith efforts, the parties fail to

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reach ultimate agreement on the terms in issue the contract to negotiate is deemed performed and the parties are discharged from their obligations. Failure to agree is not, itself, a breach of the contract to negotiate." Creditors also cite *Cedar Fair, L.P. v. City of Santa Clara*, 194 Cal. App. 4th 1150, 1171 (2011) and *Delaware Tetra Techs., Inc. v. City. of San Bernardino*, 247 Cal. App. 4th 352, 366, (2016) (term sheet only bound the parties to negotiate in good faith toward a final agreement as they had to hammer out issues) for a somewhat similar proposition. However, none of those cases is remotely like this case, and therefore, their precedential or even persuasive value is tenuous at best. For their part, Debtors cite nearly no relevant authority at all.

Thus, without clear guidance from the parties, the court notes that if the mediation fails, this case will go to trial to resolve the contempt and stay annulment issues (but not on this calendar, see below). Given the substantial efforts put forth by the parties, Judge Jury, and Judge Bauer to seek a resolution, it would be a pity to let things fall apart when the parties are so close to resolving these matters. Therefore, the court is persuaded that the spirit of the mediation was intended to put these matters to rest, which strongly implies inclusion of Yasinco LLC. Debtors do not put forth a compelling argument (at least not in these papers) that including Yasinco, LLC in the final settlement agreement would be prejudicial to them, or that inclusion of the LLC was not obviously at the center of the discussions. On other hand, Creditors do make a persuasive argument that if Yasinco, LLC is not included, then there exists a significant risk that these matters will not be settled at all because Debtor could still, in theory, pursue remedies against Creditors on behalf of Yasinco, LLC, defeating the purpose of the term sheet which was to put everything to rest.

Even if that is not Debtors' intention (and the court has its doubts), Debtors have not satisfied the court that such actions are not outside the realm of possibility. Clearly there is no trust between the parties. But, if Debtors are truly interested in resolving these issues, as evidenced by their participation in the mediation, why not just agree to the modifications?

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Moreover, Debtors need to evaluate the weak posture this puts them in. Normally, the only time punitive damages for violation of the automatic stay are supported is where there is clear proof of willful (i.e.. knowing and intentional) violation. See §363(k)(1). Even actual damages seem tenuous in this case because, reportedly, title or at least possession was no longer in the Debtor but in his LLC at the time of repossession. The automatic stay does not protect separate entities whose only connection to the case is that the stock is owned by the debtor. See *In re Hamilton*, 2020 WL 995750 at *1 (9th Cir. 2020) ("The automatic stay arising from 11 U.S.C. § 362(a) generally protects only the debtor, the property of the debtor, and the property of the estate. It does not apply to actions against guarantors, sureties, corporate affiliates, or other non-debtor parties liable on the debts of the debtor." (internal citations and quotations omitted)). Unfortunately, Debtors did not file a reply to Creditors' opposition, so the court does not really have an answer to this question. On balance, Creditors appear to have the more righteous position and the motion will be denied, if for no other reason than the term sheet did not represent a full meeting of the minds. This leaves the Debtor in a weak position on the violation accusation, however. If there is, in fact, some unstated but compelling reason for Debtors to withhold their signatures on the final settlement agreement, the court is willing to hear that argument. Even if explained, however, there may still not be much of a case for damages in their case as stated.

Deny

Party Information

Debtor(s):

Mohamed M Elhendi

Represented By
David Brian Lally

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Joint Debtor(s):

Samar Abdelghany

Represented By
David Brian Lally

Movant(s):

Mohamed M Elhendi

Represented By
David Brian Lally

Samar Abdelghany

Represented By
David Brian Lally

Trustee(s):

Karen S Naylor (TR)

Pro Se

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#11.10 CONT Motion for an order to show cause re Civil Contempt and for an order holding Creditor LA Catering Truck MFG and its principal Jorge Gomez in Civil Contempt
(cont'd from 9-01-20)

[fr: 2/25/20, 3/10/20, 4/28/20, 6/30/20]

Docket 11

Tentative Ruling:

Tentative for 9/8/20:
See #11.

Tentative for 9/1/20:
From what the court can determine in this case assigned from Judge Bauer, a settlement was reached after mediation. What remains unclear on this record is why that does not resolve the question. See #15

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Mohamed M Elhendi

Represented By
David Brian Lally

Joint Debtor(s):

Samar Abdelghany

Represented By
David Brian Lally

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Movant(s):

Mohamed M Elhendi

Represented By
David Brian Lally

Samar Abdelghany

Represented By
David Brian Lally

Trustee(s):

Karen S Naylor (TR)

Pro Se

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#11.20 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2003 Workhorse, VIN: 5B4KP42R533360171
(cont'd from 9-01-20)

**LA CATERING TRUCK MFG, INC., AND JORGE GOMEZ
Vs.
DEBTORS**

Docket 23

Tentative Ruling:

Tentative for 9/8/20:
See #11.

Tentative for 9/1/20:
It appears that the opposition is primarily concerned with not making relief of
stay retroactive. Presumably this is because of the OCS re contempt and
tentative settlement. See #14. So, the motion is granted insofar as
annulment retroactive to the petition is sought, which is continued until the
results of the mediation settlement can be sorted out.

Appearances necessary. Telephonic appearances only. Any party who
wishes to appear must register in advance by contacting CourtCall at (866)
582-6878.

Party Information

Debtor(s):

Mohamed M Elhendi

Represented By
David Brian Lally

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Joint Debtor(s):

Samar Abdelghany

Represented By
David Brian Lally

Movant(s):

Jorge Gomez

Represented By
Giovanni Orantes

L.A. Catering Truck MFG, Inc.

Represented By
Giovanni Orantes

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:18-13420 Kevin Sadeghi

Chapter 7

#12.00 Objection to Claim Number 4 of Midland Funding, LLC

Docket 37

Tentative Ruling:

Tentative for 9/8/20:
Sustain objection. Appearance is optional.

Party Information

Debtor(s):

Kevin Sadeghi

Represented By
Allan O Cate

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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#13.00 Objection to Claim #7 of Synchrony Bank

Docket 38

Tentative Ruling:

Tentative for 9/8/20:
Sustain objection. Appearance is optional.

Party Information

Debtor(s):

Kevin Sadeghi

Represented By
Allan O Cate

Movant(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1613670535>

ZoomGov meeting number: 161 367 0535

Password: 137406

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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8:18-13311 Ruby's Diner, Inc., a California corporation

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#1.00 Motion For Recusal Of Presiding Judge

Docket 777

Tentative Ruling:

Tentative for 9/9/20:

This is Doug Cavanaugh's and Ralph Kosmides' (collectively "Movants") motion to recuse Judge Scott Clarkson from presiding over the entirety of this case, including any adversary proceeding or contested matter that may arise therein, under 28 U.S.C. § 455(a), on the ground that Judge Clarkson's impartiality may be open to question as he previously served as a mediator in four mediation sessions prior to the cases being reassigned from Judge Bauer. This memorandum covers two separate but identical motions, #s 1 and 2 on calendar, in cases (#s 18-13311 and 18-13324). The motions are opposed by Creditor, Winthrop Gulobow Hollander ("WGH"), the Chapter 11 Trustee, Peter Mastan ("Ch. 11 Trustee"), the Chapter 7 Trustee, Richard Marshack ("Ch. 7 Trustee"), and Creditor Pachulski Stang Ziel & Jones who filed a joinder to the other oppositions.

1. Factual Background

The following facts as rendered by Movants do not appear materially disputed. The Movants are the co-founders of Ruby's Diner, Inc. ("RDI" or "Debtor") and of Ruby's Franchise Systems, Inc. ("RFS" sometimes with RDI "Debtors")- an entity affiliated with RDI through common ownership and control. Mr. Cavanaugh served as the Chief Executive Officer ("CEO") of RDI since its incorporation in 1985 and of RFS since its incorporation in 1990. Mr. Kosmides was a former Chief Finance Officer of RFS and was a former officer of RDI until his resignation approximately five years ago. Mr.

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Cavanaugh owns a 60% share in RDI and in RFS while Mr. Kosmides holds the other 40% share in each of the companies.

Mr. Cavanaugh was the appointed Responsible Individual for RDI in the chapter 11 phase of the case and for RFS prior to the appointment of the chapter 11 trustee. Furthermore, Messrs. Cavanaugh and Kosmides are creditors of each of the bankruptcy estates on account of certain obligations arising from pre and postpetition contracts with the debtors. RDI and its affiliates sought bankruptcy protection under chapter 11 of the Bankruptcy Code on September 5, 2018 initiating case number 18-13311. On September 6, 2018, RFS commenced its voluntary chapter 11 initiating case number 18-13324.

Judge Catherine Bauer substituted as the presiding bankruptcy judge for RDI on September 5, 2018, and for RFS on September 7, 2018. On September 5, 2018, Judge Bauer entered the order to administer jointly the RDI's case along with its six affiliates. [Docket No. 6.] The RFS case is being administered separately from the RDI and its affiliates. Judge Bauer approved the employment of Pachulski Stang Ziehl and Jones, LLP as general bankruptcy counsel for RDI pursuant to the entered order on December 20, 2018.

Several other professionals have been hired by the estate including Donlin, Recan & Company as the estate's claims and noticing agent (on a limited capacity) and GlassRatner Advisory & Capital Group LLC (only as to the Debtor) as its financial advisor. [Docket Nos. 331 and 399.] On September 19, 2018, the Committee of Unsecured Creditors was appointed in the case ("RDI Committee"). [Docket No. 69.] Winthrop Couchot Golubow, LLP was appointed as its general bankruptcy counsel while Force 10 Partners, LLC was employed as its financial advisor. [Docket No. 176 and 177.] On December 12, 2018, the court entered an order approving the employment of Theodora Oringher PC as general bankruptcy counsel to RFS and Armory Consulting, Co. as its financial advisors. [RFS Docket Nos. 93

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and 94.] Although the RFS case was being administered as a separate case, RFS and RDI filed a joint plan of reorganization beginning with Docket No. 344. The joint plan underwent several iterations with the last version marked Third Amended Joint Plan before the Debtor's case was converted to chapter 7. Thus, all issues involving the plan affected both the RFS and RDI bankruptcy cases. Through the course of the chapter 11 cases, the main issue had always been the plan's feasibility and source of funding for the joint plan to pay the escalating chapter 11 administrative expenses (which inevitably called into question the reasonableness of such fees) and the treatment of outstanding claims of unsecured creditors in the case. This included funds from Steve Craig and litigation proceeds from potential claims against insiders of the Debtor and RFS ("D&O Litigation").

To address this crucial obstacle to confirmation, the Debtor, RFS and the RDI Committee agreed to mediate their disputes and participated in what eventually became four separate mediation sessions conducted by the Hon. Scott Clarkson as the mediator. The order approving the mediation before Judge Clarkson was entered on May 29, 2019. [Docket No. 371.] A virtually identical order was entered in the RFS bankruptcy case on May 31, 2019 assigning the mediation to Judge Clarkson. [RFS Docket No. 201.] The parties and their respective counsel, along with the other stakeholders in the case: Opus Bank, U.S. Foods, Inc., Debtor, RFS, the Movants, the RDI Committee, and significant creditors of the SoCal Debtors, Pillsbury Winthrop and Steve Craig, who at the time, would have been the major source of funding for any chapter 11 plan (collectively "Parties"), attended and participated in the mediation sessions. On June 21, 2019, the Parties were present at the first mediation session presided on by Judge Clarkson held in the Santa Ana Bankruptcy Court ("RDI Mediation I"). On July 25, 2019, a second mediation session was conducted with the same Parties being present before Judge Clarkson ("RDI Mediation II"). From the transcript of the RDI Mediation II, the D&O Litigation, including evaluating the merits of the insider claims, and the payment of certain professional fees from proceeds of

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the litigation were discussed. While there was a point when the deficit in plan funding was manageable and settlement appeared to be achievable, the RDI Committee decided not to move forward with the deal. By the time the third and fourth mediation sessions took place before Judge Clarkson, the administrative claims allegedly became so high that the proposed joint plan looked to the D&O policy as a major source of payment for the administrative and unsecured claims. The joint plan of reorganization proposed establishing a litigation trust whereby certain chapter 11 administrative claims and unsecured creditors' claims will be paid in tranches. The various iterations of the plan in chapter 11 discussed the availability of coverage under the D&O insurance policy (which may provide up to \$5 million in possible insurance coverage) to pay such claims. Movants do not concede that there is any D&O Litigation liability.

On August 13, 2019, Judge Clarkson conducted a third mediation session with all the parties present ("RDI Mediation III") which tackled various aspects of the same plan issues. On November 8, 2019, Judge Clarkson conducted the last mediation session with all the parties present ("RDI Mediation IV"). According to the November 8, 2019 transcript, as of October 2019, the combined fees were approximately \$5.3 million to be capped at \$6 million for which there was insufficient funds from the plan proponent to pay the fees in full. The transcript further referred to the D&O Litigation and how such proceeds, if any, will be used to pay the professionals' fees. Ultimately, however, the Debtors were unable to confirm their proposed joint plan when Steve Craig, an early sponsor, withdrew as the principal proponent of the plan thereby leaving the D&O Litigation as the only remaining major source of any potential distribution in both bankruptcy estates. The Movants were present and participated in all four RDI Mediation sessions along with their counsel, Ted Stolman of Freeman Freeman & Smiley, LLP, and were privy to settlement discussions in which Judge Clarkson served as the mediator.

On April 10, 2020, Debtor RDI moved to convert the chapter 11 case to one under chapter 7 which was granted on April 15, 2019. [Docket No. 577.]

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Richard A. Marshack was appointed as the chapter 7 trustee. [Docket No. 578.] On April 15, 2020, a chapter 11 trustee was appointed in the RFS case. [RFS Docket No. 358.] Peter Mastan was appointed as the chapter 11 trustee in the RFS case. [RFS Docket No. 360.] The various motions filed in the chapter 7 case such as the §364 Motion and the Special Counsel Application motions pending demonstrate that at least one item of focus since conversion has been on the purported claims against Movants as insiders of the Debtor as the major source of funding for the estates. Similarly, the Chapter 11 trustee in the RFS Case has made a demand to RDI's insurance carrier on RDI's D&O policy on June 22, 2020. Thus far, according to Movants, no plausible claim under the purported D&O Litigation has been clearly articulated. Due to the impending retirement of Judge Bauer, the Debtor's case was first assigned to Judge Erithe Smith while the RFS Case was assigned to Judge Clarkson following the court's standing procedure of assigning cases based on the last digits of case numbers. For an unexplained reason, however, the §364 Motion and the Special Counsel Motion were scheduled in Judge Clarkson's calendar prior to having the order of transfer issued and even though the Debtor's case is the low numbered case of the two. On July 31, 2020, the court entered Administrative Order 20-07 dated July 15, 2020 reassigning the Debtor's case to Judge Clarkson as the presiding judge.

2. Recusal Standards

Pursuant to 28 U.S.C. § 455(a), a judge must disqualify himself if his impartiality might be reasonably questioned. "It is a general rule that the appearance of partiality is as dangerous as the fact of it." *U.S. v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980). "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism

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that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). In the absence of a legitimate reason to recuse himself, a judge should participate in the cases he is assigned. *U.S. v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008). But, if it is a close case, the balance tips in favor of recusal. *Id.* Section 455(b), which requires recusal if the judge has personal bias or prejudice, is not implicated here although some passing reference is made to §455(b)(1) which requires recusal where the judge "has personal knowledge of disputed evidentiary facts concerning the proceeding." However, this does not seem to apply unless one accepts Movants' argument that the mediations amount to such an extra judicial obtaining of knowledge, a dubious proposition as discussed below.

Recusal is appropriate where "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Blixseth v. Yellowstone Mountain Club, LLC*, 742 F.3d 1215, 1219 (9th Cir. 2014) citing *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008); see also *Holland*, 519 F.3d at 913 (section 455(a) asks whether a reasonable person perceives a significant risk that the judge will resolve the case on a basis other than the merits). The appearance of impropriety can be enough for recusal; actual bias is not necessary. *Id.* citing *Liljeberg v. Health Servs. Acq. Corp.*, 486 U.S. 847, 864-65 (1988); *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993). Appearance is evaluated by looking at how the conduct would be seen by a reasonable person, not someone "hypersensitive or unduly suspicious." *Id.* citing *Holland*, 519 F.3d at 913 (9th Cir. 2008). Recusal under §455(a) is fact-driven and may turn on the subtleties of a specific case. The analysis should not be focused on comparisons to similar situations, but by an independent examination of the specific facts and circumstances at issue. *Holland*, 519 F.3d at 913.

Here, Movants assert that through his participation as mediator, Judge Clarkson acquired extrajudicial knowledge that would likely be excluded as evidence under FRE 408. Movants cite *Kearny v. Milwaukee Cty.*, 2007 WL 3171395 at *2 (E.D. Wis. Oct. 26, 2007) for the proposition that once a judge

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has shed the role of a presiding judge and acted solely in the role of mediator, it is impossible to un-ring that bell; a judge who acts as a mediator without the expectation that the case may be re-assigned to him or her for the purposes of proceeding as the trial judge will almost invariably be presented with a case where impartiality may reasonably be questioned, thereby necessitating a recusal pursuant to 28 U.S.C. § 455(a). Specifically, Movants assert that with respect to (1) the D&O Litigation; and (2) the reasonableness of the chapter 11 professional fees, decisions on the merits of these two matters including orders to grant or deny certain motions affecting such D&O Litigation are tainted by the information, some of it sensitive and confidential, acquired outside of the record and evidence presented in the proceedings. Furthermore, Movants assert that to the extent the court, as the mediator, has been privy to confidential extrajudicial information or has been influenced by such to form an opinion on the merits of the D&O Litigation, the reasonableness of the professionals' fees or how unsecured creditors should be paid in this case stemming from information obtained during the mediation, the relief requested in this Motion is necessary and important to the fair administration of this bankruptcy case and prosecution of insider claims in this case. Moreover, Movants assert that granting the motion serves the public's interest in preserving the integrity of judicial proceedings by ensuring that the presiding judge will decide issues in the cases purely on their merits and free from prejudice or bias that may result from prior exposure to the cases. Movants also urge that recusal will protect the integrity of the mediation program encouraging parties to be forthright with their mediators in sharing sensitive information which might not be shared with the trier of fact. Thus, Movants' conclude, by any objective standard, Judge Clarkson's objectivity could reasonably be called into question. But *Kearny* does not appear to be the majority rule.

In response, Ch. 11 Trustee asserts that Judge Clarkson's prior involvement in a mediation concerning alleged claims against Officers and Directors is not actually an intrinsic part of this case, or the chapter 11 case of

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RFS. Furthermore, Ch. 11 Trustee asserts that the pursuit of the claims against Directors and Officers will likely be pursued in a different forum, not before Judge Clarkson in the Bankruptcy Court; indeed, to the extent that Ch. 11 Trustee pursues such claims, it would be Trustee's intent to have the claims heard in the Federal District Court or State Court, and not the Bankruptcy Court. As an apparent concession, Ch. 11 Trustee suggests that to avoid the appearance of partiality, the harm alleged as grounds for recusal could be addressed by a voluntary recusal by Judge Clarkson of any proceedings that relate to the claims against Directors and Officers (or presumably by a renewed motion for recusal). As a practical matter, Ch. 11 Trustee asserts that if any of D&O matters appears before Judge Clarkson at all, it would be in the form of a settlement motion. Any trial on those matters would not take place before Judge Clarkson.

WGH argues that Movants are ignoring significant 9th Circuit precedent that make clear that a judge's participation as mediator and later as presiding judge does not automatically result in a presumption of bias nor is acting as a mediator a source of extra-judicial information. For example, WHG cites *U.S. v. Winston*, 613 F.2d 221, 223 (9th Cir. 1980) where the court stated: "Section 455(b)(1) may alternatively require recusal in situations wherein the judge has pre-trial knowledge of the facts of a case, independent of any possible bias or partiality. In such instances, however, recusal is appropriate only when the information is derived from an extra-judicial source. Knowledge obtained in the course of earlier participation in the same case does not require that a judge recuse himself." However, this case did not involve a judge who may have been exposed to confidential information by attending a mediation, but rather the judge's information in *Winston* was acquired in the course of a pre-trial competency hearing. The oppositions do cite cases that stand for the general proposition that judges need not be recused solely because they acted as mediators prior to becoming the presiding judge over the case. See e.g. *SEC v. ING USA Annuity & Life Ins. Co.*, 360 Fed.Appx. 826, 828 (9th Cir. 2009) (unpublished) ("There is no

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authority for the proposition that judges must recuse themselves if they served as mediators in a related proceeding.") However, as the caselaw in the 9th Circuit makes clear, each case is to be decided according to the unique facts and subtleties of that case, making such a motion somewhat resistant to bright line rules. The oppositions cite no authority for the proposition that recusal is extraordinary relief or carries a particularly heavy burden of persuasion. On the contrary, the caselaw unequivocally states that if there is a doubt, that doubt tips in favor of recusal.

The opponents also argue that judicial economy is served by denying the motion. The oppositions assert that these cases are quite complex, and thus, given Judge Clarkson's pre-existing familiarity with this case, judicial economy would be better served if Judge Clarkson remains the presiding judge. Furthermore, the oppositions assert that reassignment to yet another judge would result in substantial delay as it would take time for the new judge to adequately acquaint himself or herself with this case. Moreover, the oppositions also persuasively argue that the better option for all involved is to simply keep the bankruptcy cases before Judge Clarkson, and if claims for liability or other sensitive issues are brought against Movants, then they should seek to recuse Judge Clarkson from those specific proceedings rather than from the entire case. The oppositions also point out that Judge Clarkson does not have any of the actions described by Movants before him at this point. Thus, the oppositions conclude, the motion is not only largely unsupported by relevant authority, it is also premature.

In reply, Movants point out that Judge Clarkson's knowledge of this case was obtained not in his official capacity as a presiding judge, but in the course of an out-of-court mediation, which Movants argue is a meaningful distinction with respect to whether Judge Clarkson's knowledge of the case can be considered extra-judicial in nature. The reply also seeks to draw factual and legal distinctions between the cases cited by the oppositions and the present motion, which leaves something of a muddy picture. Reconciling all

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the competing issues is not at all easy.

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The court understands Movants' position but finds the oppositions more persuasive, even if the case law they cite arguably does not precisely support their position, or there is some authority going the other way. First, the court is persuaded that the motion, if granted, would result in unnecessary delay to the detriment of all involved. It is unknown how long it would take for a new judge to take over this complex case and get up to speed. Second, the motion is premature because as the oppositions point out, the issues causing the Movants' anxiety are not yet before Judge Clarkson and it is speculative whether they ever will be. The Chapter 11 Trustee asserts an intention to have all those issues taken to trial (if necessary) in a forum other than the bankruptcy court. Third, even if these issues went to trial in the bankruptcy court, Movants could move for Judge Clarkson to be recused or request Judge Clarkson to recuse himself in a trial on those issues, without the need to remove Judge Clarkson from the entire case. This would be much less disruptive and more efficient while still preserving the goals of mediation and would preserve what may be the most compelling issue as argued by Movants, i.e. that the appearance of impartiality is as important if not more so than the reality. In short, and viewed from the standpoint of a reasonable person, not an overly suspicious one, there is no compelling reason to recuse Judge Clarkson *at this time*. There may come such a time, as the oppositions seem to concede, but we are not there yet and until then the court sees no compelling need to recuse.

Deny.

Party Information

Debtor(s):

Ruby's Diner, Inc., a California

Represented By
William N Lobel
Jeffrey P Nolan

Trustee(s):

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Richard A Marshack (TR)

Represented By
Laila Masud
D Edward Hays
Tinho Mang

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8:18-13324 Ruby's Franchise Systems, Inc., a California

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#2.00 Motion For Recusal Of Presiding Judge

Docket 431

Tentative Ruling:

Tentative for 9/9/20:
See #1.

Party Information

Debtor(s):

Ruby's Franchise Systems, Inc., a

Represented By
Eric J Fromme
Christopher J Harney

Trustee(s):

Peter J Mastan (TR)

Represented By
Christopher Celentino

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8:19-11458 2045 E Highland, LLC

Chapter 11

#3.00 STATUS CONFERENCE RE: Debtor's Disclosure Statement Describing
Chapter 11 Plan Of Reorganization
(con't from 7-22-20)

Docket 64

Tentative Ruling:

Tentative for 9/9/20:
Continue so as to coincide with promised dismissal motion.

Tentative for 7/22/20:
Despite several continuance nothing new has been filed. Convert to Chapter 7.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/6/20:
The court issued its tentative 2/26 pointing out various deficiencies in the disclosure statement, as drafter. Although various events have occurred in the case, such as a sale of real property, the disclosure statement has not

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changed. Why haven't we seen an amended disclosure statement?

No tentative.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:

This is the debtor's motion to approve as adequate its revised Disclosure Statement to accompany its First Amended Plan. The Disclosure Statement is still not adequate for at least the following reasons:

1. Sale of the real property in San Juan Capistrano, the premises for debtor's business, is promised no later than February 28, 2020. But just how this is to be accomplished without a §363(f) order is not explained and it is obvious that a plan providing for same is not yet possible. This needs better explanation and/or a more realistic timetable.
2. The plan still needs a better discussion as to how the equity interests are being treated. Presumably this belongs in Class 4 and there should be there a discussion about the absolute priority rule and the contribution of \$20,000 in new value. Further, some discussion as to how/why that is the proper number is necessary given the

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requirements of "market testing" found in *Bank of America NT & SA v. 203 N. La Salle Street Partnership* 526 U.S. 434 (1999) would be in order.

3. The description about discharge at 21:1-3 should be corrected in view of §1141(d)(3) as suggested by the United States Trustee.
4. As indicated in the opposition of Seacoast Commerce Bank a better job could be done explaining how this plan is feasible if, as Seacoast argues, only about \$13,000 is available on a net basis for monthly debt service after costs of operation. Normally, feasibility is a confirmation issue, but this would be the opportunity to explain in simple terms how this works.
5. Some discussion about the alleged \$150,000 loan to an insider needs to be discussed and if it is not to be pursued, why.
6. A consistent explanation as to whether Northeast Bank is truly a fully secured creditor at \$93,118 including post-petition assets is necessary, in order to evaluate the best interest of creditors test, as Seacoast argues.
7. Some discussion about the pending litigation against Seacoast is also necessary. Is this to be pursued post confirmation? If so, how is the litigation to be funded and what goal is sought? If a judgment were achieved what becomes of the proceeds?

Deny

Tentative for 1/8/20:

This is debtor's motion for approval of disclosure statement as required under §1125(a)(1) as containing "adequate information." An adequacy finding is opposed in oppositions filed by both the UST and Seacoast

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Commerce Bank. The oppositions are both well taken, and the points raised need not be restated at elaborate length here. The court is primarily concerned about the following fundamental deficiencies:

1. The plan clearly violates the absolute priority rule found at §1129(b)(2) (B)(ii). The plan proposes only 1% to unsecured creditors in installments yet the principals retain governance and stock ownership. Seacoast, which itself may be the largest unsecured creditor, plans to vote against. No new value is mentioned. So, unless something else is true this plan is patently unconfirmable, and distribution of a disclosure statement on such a plan is a waste of time and resources. While the court does not usually prejudge confirmation issues, this one is too fundamental to ignore, and so either amendment or at least explanation is required;
2. The proposed treatment of Seacoast 's secured claim is also very problematic. Debtor proposes either to cramdown a payment over 30 years at 5% or a "consensual sale" of the underlying real estate collateral. But the timing and conditions of the proposed sale are unstated, not made subject to conditions and are, thus, illusory. Can the debtor sell whenever it feels like it? Whenever in future it thinks the market has appreciated enough, even if that takes years, or never? The alternative treatment is also a non-starter. An effective 100% loan to value claim is far riskier than a more conventional loan usually made as a percentage of value. Consequently, the increased risk element must be accommodated (paid for), and anything less is a legally impermissible imposition of the risk upon the lender. See *In re North Valley Mall* ,432 B.R, 825 (Bankr. C.D. Cal. 2010). Although this is usually a confirmation issue, 5% is far too low for a commercial loan under any reasonable economic analysis, i.e. prime rate is 4.75% and must be "built up" from there even under a *Till* analysis. *North Valley Mall* is not the only analysis relied upon by courts, but this court happens to believe it is the most appropriate in a business, real estate

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context. Therefore, the court will not approve dissemination of disclosure upon such a patently unconfirmable plan.

3. Feasibility is very questionable. Again, normally this is judged at confirmation, but the court does not ignore that the MORS show a generally declining cash position, and this is while there has been a 9-month moratorium in debt payments. Had even reduced payments been made the debtor would be by now out of money. What, if anything, is expected to change this outlook?

Deny

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

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8:19-12512 Sococo, Inc.

Chapter 11

**#4.00 Post- Confirmation Status Conference Hearing Re: Chapter 11 Plan
(set from confirmation hrg held on 7-18-19)
(cont'd from 4-29-20)**

Docket 32

Tentative Ruling:

Tentative 9/9/20:

Continue to coincide with final decree motion scheduled 9/23 @ 10:00 a.m.

Tentative for 4/29/20:

Continue approximately 4 months with expectation of a motion for final decree in meantime.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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Tentative for 12/11/19:
Continue to April 30, 2020. Court expects a final decree motion in interim.
Appearance waived.

Tentative for 7/18/19:
No tentative.

Tentative for 7/2/19:
No tentative.

Party Information

Debtor(s):

Sococo, Inc.

Represented By
Ron Bender
Krikor J Meshefejian
Lindsey L Smith

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#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1610814414>

ZoomGov meeting number: 161 081 4414

Password: 635654

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

**#1.00 STATUS CONFERENCE RE: Complaint for: 1) Avoidance of Unauthorized Post-Petition Transfer (11 USC Section 549); 2) Recovery of Avoided Transfers (11 USC Section 550); 3) Turnover of Property of the Estate; 4) Quiet Title to Real Property and 5) Injunctive Relief
(rescheduled from 6-4-2020 at 10:00 a.m. per court)
(cont'd from 6-03-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-12-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 9-02-20**

Tentative Ruling:

Tentative for 6/3/20:
See #8 and 9 @11:00 a.m.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

Defendant(s):

Hamid Rowshan

Pro Se

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

WELLS FARGO BANK

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By

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Carlos F Negrete - INACTIVE -

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Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

Trustee(s):

Richard A Marshack (TR)

Pro Se

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8:20-11611 AEPC Group, LLC

Chapter 11

Adv#: 8:20-01105 AEPC Group, LLC v. Allegheny Resources, LLC

#2.00 STATIS CONFERENCE RE: Complaint For: 1. Avoidance Of Preferential Transfers; 2. Avoidance Of Lien And Equitable Subordination; 3. Avoidance And Preservation Of Lien Claims; 4. Avoidance Of Fraudulent Transfers; 5. Avoidance Of Fraudulent Transfers; 6. Usury; 7. Value Of Assets And Extent Of Lien; Disallowance Of Claim; 9. Unconscionability; 10. California Business & Professionas Code Sections 17200 Et. Seq. and 11 Preliminary Injunctive Relief Pursuant To 11 USC Sections 105,362, 1107,1121, 1129;; FRBP 7065, FRCP 65 (A) And (D), And LBR 7065-1 (A) And (B)(2).

Docket 1

Tentative Ruling:

Tentative for 9/10/20:
What is status of service/default?

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

Defendant(s):

Allegheny Resources, LLC

Pro Se

Plaintiff(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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8:13-20028 Tara Jakubaitis

Chapter 7

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

- #3.00** 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 at s/c held 8-15-19)
(cont'd from 8-06-20 per order approving the stip. to cont. p/t entered 7-30-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-24-20 AT 11:00 A.M.
PER ORDER GRANTING CONTINUANCE OF PRE-TRIAL
CONFERENCE ENTERED 9-04-20**

Tentative Ruling:

Tentative for 2/27/20:

This is supposed to be a pre-trial conference. Sadly, it is not that and this is hardly the first time in this series of cases where the court has been sorely frustrated.

As required by the LBRs, the parties were to have met and conferred in good faith to narrow the issues so that trial time could be focused on those items truly in dispute. Local Rule 7016-1 sets forth a very specific timeline and list of duties incumbent on each side. At LBR 7016-1(b)(1)(C) Plaintiff was to have initiated a meet and confer *at least 28 days* before the date set for the pre-trial conference. According to Defendant's papers, this did not occur 28 days before the originally scheduled pretrial conference of Feb. 6, *or indeed at all* until February 13 when Plaintiff reportedly filed his "Pretrial Stipulation" in which he claims it was Defendants who "refused to participate in the pretrial stipulation process" necessitating what is actually a unilateral stipulation. Defendant on the next day, February 14, filed his Unilateral Pretrial Stipulation. Defendant does acknowledge at his page 2, line 1-2 that Plaintiff sent something over to Defendant on January 28, but it was

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reportedly "not complete in any respect." As to the original date of the Pretrial Conference of February 6, that was very late. Whether that document was anything close to what was later filed unilaterally on Feb. 13 is not clarified. But what is very clear is that these two unilateral "stipulations" are largely worthless in the main goal of narrowing issues inasmuch as the parties seem to be discussing two entirely different complaints. Defendant focuses on what the former trustee (now deceased) may have known about the existence of a loan undisclosed on the schedules made by Frank to WeCosign, Inc., which loan was reportedly worthless in any case, and about how that knowledge should be imputed to Plaintiff Marshack. But why the trustee's knowledge, imputed or otherwise, should justify an alleged misstatement or omission to list assets under oath, is never quite explained. One presumes Defendant will argue materiality. Plaintiff focuses on the alleged use of another corporation, Tara Pacific, as the repository of funds taken from WeCosign as an alleged fraudulent conveyance and then used by Frank and Tara as a piggy bank between 2010 and 2012 and upon alleged misstatements in the schedules about Tara's and Frank's actual average income. While this sounds like a fraudulent conveyance theory the gist seems to be that Tara and Frank were using ill-gotten gains to live on while denying in respective schedules that they had any income (or assets) thus comprising a false oath. There probably are connections between these different stories, but that is not made at all clear (and it must be made clear). Plaintiff's overlong "stipulation" is written more like a 'cut and paste' brief containing long tables with over 59 footnotes inserted. One presumes this represents a good faith compilation of bank records, but even that is left unclear. But the language used reads purely as advocacy, not an attempt to narrow the disputed facts in a way the other side can sign.

Buried in the Defendant's recitations (at page 4, ¶ 13) is the argument that the case should be dismissed as outside the statute of limitation (or statute of repose in Defendant's terms) described at §727(e)(1). Why this was not raised 50+ months ago when the action was filed by Rule 12(b)

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motion or otherwise is not explained. What the Defendant expects the court to do with this point now is also not explained.

In sum, this case is still a disorganized mess. This is not the first time the court has voiced its utter frustration with this series of cases. Rather than being ready for trial, we are very much still at the drawing board. The court is not happy about it as this is hardly a young case.

What is the remedy? The court could order sanctions against either side, or maybe both sides, and that would be richly deserved. The court could decide that Plaintiff as the party with the initial duty under the LBRs should suffer the brunt of just consequences by a dismissal, as the ultimate sanction. But however tedious and frustrating this has become the court would rather see these cases decided on their merits (if any) *if that is possible*. But what the court will not do is to further indulge these parties in disobeying the LBRs and generally continuing to shamle along, never getting anywhere. Therefore, **it is ordered**:

1. The parties will immediately meet and confer about reducing the two unilateral 'stipulations' into an intelligible, single, useful list of items not in dispute and therefore requiring no further litigation;
2. The resulting stipulation will be concise, user-friendly and focused on the actual legal issues to be tried;
3. The stipulation will contain a concise list of exhibits to be offered at trial identified by number for Plaintiff and letter for Defendant;
4. The parties will attempt in good faith to resolve any evidentiary objections to admission of the exhibits, and if agreement cannot be reached, state concisely the reasons for or against admissibility;
5. The stipulation will contain a list of witnesses to be called by

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each side, with a very brief synopsis of the expected testimony;

6. All factual matters relevant and truly in dispute will be listed, by short paragraph;
7. All legal issues to be decided will be separately listed, by paragraph;
8. Any threshold issues such as Defendants argument about statute of repose will be separately listed along with a suggested means of resolving the issue; and
9. Both sides will estimate expected length of trial, mindful that the court requires all direct testimony by declaration with the witnesses available at trial for live cross and re-direct.

In sum the parties are to do their jobs. If the court's order is not followed *in enthusiastic good faith, and completely* with the goal of narrowing the issues, and if the resulting product is not a concise, user-friendly joint pretrial stipulation, the offending party or parties will be subject to severe sanctions which may include monetary awards and/or the striking or either the complaint or answer.

Continue about 60 days to accomplish the above.

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.

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

Thursday, September 10, 2020

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

Chapter 7

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
discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can
be set.

Tentative for 5/4/17:
Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines
make sense at this juncture given the ongoing disputes over even
commencing discovery?

Tentative for 3/23/17:
See #13.1

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

Thursday, September 10, 2020

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

Chapter 7

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

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

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

Thursday, September 10, 2020

Hearing Room 5B

10:00 AM

CONT... Tara Jakubaitis

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, September 10, 2020

Hearing Room 5B

10:00 AM

8:18-10582 David R. Garcia

Chapter 7

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

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(con't from 7-23-20 per stip. & order entered 6-19-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-25-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE AND DEADLINE TO FILE PRE-TRIAL MOTIONS
ENTERED 8-07-20**

Tentative Ruling:

Tentative for 12/5/19:
Status?

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.

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

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.

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

Thursday, September 10, 2020

Hearing Room 5B

10:00 AM

CONT... David R. Garcia

Chapter 7

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
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, September 10, 2020

Hearing Room 5B

2:00 PM

8:19-13164 Marc Wayne Wright

Chapter 7

Adv#: 8:19-01211 Alexander et al v. Wright

#5.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(6) of the Bankruptcy Code (cont'd from 7-09-20 per order granting defendant's mtn to cont. s/c entered 7-06-20)

Docket 1

Tentative Ruling:

Tentative for 9/10/20:
See #6

Tentative for 5/6/20:
Where's the promised summary judgment motion?

Tentative for 1/23/2020:
Status conference continued to May 7, 2020 at 10:00 a.m. Court expect motion for summary judgment in meantime.

Party Information

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

Defendant(s):

Marc Wayne Wright

Pro Se

Plaintiff(s):

Zachary Alexander

Represented By
Thomas J Polis

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

Thursday, September 10, 2020

Hearing Room 5B

2:00 PM

CONT... Marc Wayne Wright
Noah Wright

Represented By
Thomas J Polis

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Thursday, September 10, 2020

Hearing Room 5B

2:00 PM

8:19-13164 Marc Wayne Wright

Chapter 7

Adv#: 8:19-01211 Alexander et al v. Wright

#6.00 Plaintiff's Zachary Alexander And Noah Wright's Motion For Summary Judgment
(cont'd from 7-09-20 per order granting defendant's mtn to cont. s/c entered 7-06-20)

Docket 15

Tentative Ruling:

Tentative for 9/10/20:
Grant. Appearance optional.

Party Information

Debtor(s):

Marc Wayne Wright

Represented By
Anerio V Altman

Defendant(s):

Marc Wayne Wright

Pro Se

Plaintiff(s):

Zachary Alexander

Represented By
Thomas J Polis

Noah Wright

Represented By
Thomas J Polis

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Monday, September 14, 2020

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

**#1.00 TRIAL 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 p/c hrg held on 12-19--19)
(re-scheduled from 2-20-20 per court's own mtn)
(cont'd from 6-15-20 per court own mtn)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-19-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

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

Monday, September 14, 2020

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**

Monday, September 14, 2020

Hearing Room 5B

10:00 AM

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

Chapter 13

**#2.00 Debtor's Objection To Claim 5-2 Submitted By Alamitos Real Estate Partners II, LP
(cont'd from 6-15-20)**

Docket 71

***** VACATED *** REASON: CONTINUED TO 11-19-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

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**

Tuesday, September 15, 2020

Hearing Room 5B

10:00 AM

8:20-11784 Melissa Ann Belanger

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**CHI FAMILY LIMITED PARTNERSHIP
Vs.
DEBTOR**

Docket 24

***** VACATED *** REASON: CONTINUED TO 9-22-20 AT 10:30 A.M.
PER COURT'S ORDER**

Party Information

Debtor(s):

Melissa Ann Belanger	Pro Se
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Movant(s):

Chi Family Limited Partnership	Represented By Scott Andrews
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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, September 15, 2020

Hearing Room 5B

10:00 AM

8:18-10215 Isabel Garcia Rainey

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-18-20 per order granting stip. cont. hrg re: mtn entered
8-14-20)

**CITIMORTGAGE, INC.
Vs.
DEBTOR**

Docket 50

***** VACATED *** REASON: CONTINUED TO 9-22-20 AT 10:30 A.M.
PER COURT'S ORDER**

Party Information

Debtor(s):

Isabel Garcia Rainey

Represented By
Craig J Beauchamp

Movant(s):

CitiMortgage, Inc.

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, September 15, 2020

Hearing Room 5B

10:00 AM

8:18-13515 Alan Joseph Copeland and Judith Ann Copeland

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**FORETHOUGHT LIFE INSURANCE COMPANY
Vs
DEBTORS**

Docket 36

***** VACATED *** REASON: CONTINUED TO 9/22/20 AT 10:30 A.M.
PER COURT'S ORDER**

Party Information

Debtor(s):

Alan Joseph Copeland

Represented By
Steven A Alpert

Joint Debtor(s):

Judith Ann Copeland

Represented By
Steven A Alpert

Movant(s):

Forethought Life Insurance

Represented By
Daniel K Fujimoto

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, September 15, 2020

Hearing Room 5B

10:00 AM

8:19-12279 Maria Mercedes Ibarra de Acosta

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 8-11-20)

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 34

***** VACATED *** REASON: CONTINUED TO 9-22-20 AT 10::30 A.M.
PER COURT'S ORDER**

Party Information

Debtor(s):

Maria Mercedes Ibarra de Acosta

Represented By
Benjamin R Heston

Movant(s):

WELLS FARGO 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, September 15, 2020

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**SECURED CREDITOR POPPY BANK
Vs.
DEBTORS**

Docket 32

***** VACATED *** REASON: 9-22-20 AT 10:30 A.M. PER COURT'S
ORDER**

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Movant(s):

Poppy Bank

Represented By
Mitchell B Greenberg

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

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

Wednesday, September 16, 2020

Hearing Room 5B

9:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1605985582>

ZoomGov meeting number: 160 598 5582

Password: 358385

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Wednesday, September 16, 2020

Hearing Room 5B

9:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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

Wednesday, September 16, 2020

Hearing Room 5B

9:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, September 16, 2020

Hearing Room 5B

9:30 AM

8:20-11447 Ann E Myers

Chapter 7

**#1.00 Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Bank N.A.,
d/b/a Wells Fargo Auto (RE: 2014 Hyundai Santa Fe - \$5,841.29)**

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ann E Myers

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, September 16, 2020

Hearing Room

5B

9:30 AM

8:20-11668 Obdulio Nicanor Bahena and Paula Aviles de Nicanor

Chapter 7

**#2.00 Reaffirmation Agreement Between Debtor and Wells Fargo Auto
(RE: 2016 Chevy Silverado 1500 - \$13,247.55) [ES CASE]**

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Obdulio Nicanor Bahena

Represented By
Marlin Branstetter

Joint Debtor(s):

Paula Aviles de Nicanor

Represented By
Marlin Branstetter

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 16, 2020

Hearing Room

5B

9:30 AM

8:20-11753 Cenobio Campos Noyola

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (2014 Toyota Tacoma - \$29,219.09)

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cenobio Campos Noyola

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, September 16, 2020

Hearing Room 5B

9:30 AM

8:20-11781 Amilkar Natera and Alicia Bautista

Chapter 7

#4.00 Pro se Reaffirmation Agreement Between Debtor and SchoolsFirst Federal Credit Union (2014 GMC Canyon - \$14,370.89)

Docket 15

***** VACATED *** REASON: AMENDED REAFFIRMATION FILED ON 9/11/2020 WITH CERTIFICATION OF DEBTOR'S ATTORNEY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amilkar Natera	Pro Se
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Joint Debtor(s):

Alicia Bautista	Pro Se
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Trustee(s):

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

Wednesday, September 16, 2020

Hearing Room 5B

9:30 AM

8:20-11782 Atanacio S Santiago and Romana W Panaligan

Chapter 7

#5.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation [2015 Toyota Corolla - \$10,696.65]

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Atanacio S Santiago	Pro Se
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Joint Debtor(s):

Romana W Panaligan	Pro Se
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Trustee(s):

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

Wednesday, September 16, 2020

Hearing Room 5B

9:30 AM

8:20-11992 Carl Bohn, Jr

Chapter 7

**#6.00 Pro se Reaffirmation Agreement Between Debtor and OneMain
[2006 Toyota RAV4 - \$7050.00]**

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carl Bohn Jr

Represented By
John Morkos

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 16, 2020

Hearing Room 5B

9:30 AM

8:20-11999 Gerardo Ceballos and Christie Lynn Ceballos

Chapter 7

**#7.00 Reaffirmation Agreement Between Debtor and Snap-on Credit LLC
[Tools Of Trade - \$5135.00]**

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerardo Ceballos

Represented By
Kevin Tang

Joint Debtor(s):

Christie Lynn Ceballos

Represented By
Kevin Tang

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 16, 2020

Hearing Room 5B

9:30 AM

8:20-12082 Meagan Rose Olivieri Colwell

Chapter 7

#8.00 Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.
[2015 Audi 07 Utility 4D 3.0 Premium AW - \$20,175.00]

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Meagan Rose Olivieri Colwell

Represented By
Kevin J Kunde

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

9:30 AM

8:20-12142 Jose Cortez and Maria Cortez

Chapter 7

**#9.00 Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance
(RE: 2015 Honda Civic - \$4,480.00)**

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Cortez Pro Se

Joint Debtor(s):

Maria Cortez 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, September 16, 2020

Hearing Room 5B

1:30 PM

8:19-10183 Charles Ragan Peyton, III

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 8-19-20)**

Docket 48

Tentative Ruling:

Tentative for 9/16/20:

It would appear that the major points of opposition: (1) eligibility based on lack of regular income and (2) best interest of creditors, can be resolved in favor of the plan. Are there other points of contention? If not, confirm.

Tentative for 8/19/20:

The Trustee's request for an order resetting bar date for exemption objections does not seem grounded in any authority, and therefore is denied. But other issues may remain, as listed by the Trustee:

Chapter 13 Trustee's Notes:

- 1) Need updated declaration re secured payments filed.
- 2) No provision for OC property tax claims filed. Objection filed, hearing 8/19.
- 3) need 2019 tax returns.
- 4) No provision for proof of claim #1, 2017 Ford Explorer.
- 5) Trustee requesting that schedule C objection dates and property valuation waived if case is converted back to chapter 7.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys

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

Wednesday, September 16, 2020

Hearing Room 5B

1:30 PM

CONT... Charles Ragan Peyton, III Chapter 13

to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 6/17/20:
This has been continued for a considerable period but progress seems minimal or nonexistent. Nothing was filed by debtor as of 6/11, yet the Trustee's specific points appear to be left unaddressed. Convert to Chapter 7?

Tentative for 4/15/20:
Debtor may have presented enough (barely) to overcome the "regular income" question, but the Trustee's other points remain to be addressed; (1) what about the 3d TD Diversified (2) Ford lease (3) evidence on monthly expenses and reasonableness of same (4) evidence of residence value for best interest of creditors question.

Tentative for 2/19/20:
See #51

Party Information

Debtor(s):

Charles Ragan Peyton III	Represented By Richard G Heston
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Movant(s):

Charles Ragan Peyton III	Represented By Richard G Heston Richard G Heston
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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 16, 2020

Hearing Room 5B

1:30 PM

CONT... Charles Ragan Peyton, III

Chapter 13

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

Wednesday, September 16, 2020

Hearing Room

5B

1:30 PM

8:20-10181 Marco Brito

Chapter 13

#2.00 Confirmation of Chapter 13 Plan
(cont'd from 8-19-20)

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

How does debtor answer the Trustee's objections and that of secured creditors?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

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, September 16, 2020

Hearing Room 5B

1:30 PM

8:20-10464 Rosa Elena Melgar Dominguez

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 8-19-20)**

Docket 14

Tentative Ruling:

Tentative for 8/19/20:
Debtor needs to respond to Trustee's comments.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Rosa Elena Melgar Dominguez

Represented By
Richard L. Sturdevant

Movant(s):

Rosa Elena Melgar Dominguez

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 1675 Calendar**

Wednesday, September 16, 2020

Hearing Room 1675

1:30 PM

8:20-10483 Theresa Sanchez Tuckman

Chapter 13

**#4.00 Confirmation Of Chapter 13 Plan
(cont'd from 7-15-20)**

Docket 5

Tentative Ruling:

Tentative for 7/15/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Tentative for 6/17/20:

It is difficult to determine current status. All plan payments must be current and missing documents provided. Regarding arrearages, was this in the nature of paying the mortgagee on account of taxes advanced on Debtor's behalf? If it was paid to OC taxes directly, this was improper, as it should have been dealt with under the plan. An amended claim should be obtained from the lender either by stipulation or plan objection. No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, September 16, 2020

Hearing Room 1675

1:30 PM

CONT... Theresa Sanchez Tuckman

Chapter 13

arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Movant(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

1:30 PM

8:20-11572 Jonathan E McGee and Amy McGee

Chapter 13

#5.00 Confirmation of Chapter 13 Plan
(cont'd from 8-19-20)

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Jonathan E McGee

Represented By
Julie J Villalobos

Joint Debtor(s):

Amy McGee

Represented By
Julie J Villalobos

Movant(s):

Jonathan E McGee

Represented By
Julie J Villalobos

Amy McGee

Represented By
Julie J Villalobos

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

Wednesday, September 16, 2020

Hearing Room 5B

1:30 PM

CONT... Jonathan E McGee and Amy McGee

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room

5B

1:30 PM

8:20-11689 Christine Cobian Colchado

Chapter 13

#6.00 Confirmation Of Chapter 13 Plan
(cont'd from 8-19-20)

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Christine Cobian Colchado

Represented By
Christopher J Langley

Movant(s):

Christine Cobian Colchado

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 16, 2020

Hearing Room

5B

1:30 PM

8:20-11698 Daryanaz Mostajabaldaveh

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan
(cont'd from 8-19-20)

Docket 2

Tentative Ruling:

Tentative for 8/19/20:

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

Debtor(s):

Daryanaz Mostajabaldaveh

Represented By
William Huestis

Movant(s):

Daryanaz Mostajabaldaveh

Represented By
William Huestis

Trustee(s):

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 16, 2020

Hearing Room 5B

1:30 PM

8:20-11803 Khalid Sayed Ibrahim

Chapter 13

**#8.00 Confirmation Of Amended Chapter 13 Plan
(cont'd from 8-19-20)**

Docket 17

Tentative Ruling:

Tentative for 8/19/20:
Debtor needs to respond to Trustee's comments.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

Party Information

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 1675 Calendar**

Wednesday, September 16, 2020

Hearing Room 1675

1:30 PM

8:20-11881 Erwin Untalan Padillo and Vivian Fajatin Bautista

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Erwin Untalan Padillo

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Vivian Fajatin Bautista

Represented By
Hasmik Jasmine Papian

Movant(s):

Erwin Untalan Padillo

Represented By
Hasmik Jasmine Papian

Vivian Fajatin Bautista

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, September 16, 2020

Hearing Room 5B

1:30 PM

8:20-11886 Angela M Sancho

Chapter 13

#10.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angela M Sancho

Represented By
Paul Y Lee

Movant(s):

Angela M Sancho

Represented By
Paul Y Lee
Paul Y Lee
Paul Y Lee
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, September 16, 2020

Hearing Room 5B

1:30 PM

8:20-11925 Michael Torres and Maria Jay Rneiznann C Gemo

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Torres

Represented By
Julie J Villalobos

Joint Debtor(s):

Maria Jay Rneiznann C Gemo

Represented By
Julie J Villalobos

Movant(s):

Michael Torres

Represented By
Julie J Villalobos

Maria Jay Rneiznann C Gemo

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 1675 Calendar**

Wednesday, September 16, 2020

Hearing Room 1675

1:30 PM

8:20-11926 Clayton D. Botkin and Ashley R. Botkin

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Clayton D. Botkin

Represented By
Christine A Kingston

Joint Debtor(s):

Ashley R. Botkin

Represented By
Christine A Kingston

Movant(s):

Clayton D. Botkin

Represented By
Christine A Kingston
Christine A Kingston

Ashley R. Botkin

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 16, 2020

Hearing Room 5B

1:30 PM

8:20-12022 Kelly E. Lanphear

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kelly E. Lanphear

Represented By
Amanda G Billyard

Movant(s):

Kelly E. Lanphear

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:15-13438 Salvador Manuel Robledo

Chapter 13

**#14.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding
(cont'd from 8-19-20)**

Docket 113

Tentative Ruling:

Tentative for 9/16/20:
Grant.

Tentative for 8/19/20:
Status?

Tentative for 7/15/20:
Grant. Appearance is optional.

Tentative for 6/17/20:
Grant unless current. Appearance is optional.

Tentative for 4/15/20:
Grant unless current. Appearance is optional.

Tentative for 3/18/20:

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

CONT... Salvador Manuel Robledo

Chapter 13

Grant absent explanation or modification motion on file if otherwise current.

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:16-13362 Maria Esther Zavala

Chapter 13

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

Docket 75

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 (11 USC - 1307(C)) FILED 8-31-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Esther Zavala

Represented By
Andrew Moher

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

#16.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments
(cont'd from 8-19-20)

Docket 74

Tentative Ruling:

Tentative for 9/16/20:
See #17.

Tentative for 8/19/20:
See #21.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

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Tentative for 7/15/20:
See #22.

Tentative for 6/17/20:
There was an issue about getting the modification motion on for hearing?

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

**CONT... Timothy Dale Cox and Diane Gloria Cox
Status?**

Chapter 13

Tentative for 5/20/20:
See modification motion.

Tentative for 4/15/20:
Continue to coincide with hearing on the modification motion filed April 2.
Appearance is optional.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By
Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By
Thomas E Brownfield

Trustee(s):

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 16, 2020

Hearing Room

5B

3:00 PM

8:16-13679 Timothy Dale Cox and Diane Gloria Cox

Chapter 13

#17.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan or Suspend Plan Payments
(cont'd from 8-19-20)

Docket 85

Tentative Ruling:

Tentative for 9/16/20:
If the trustee's suggested terms are acceptable, grant modification.
Otherwise , no tentative.

Tentative for 8/19/20:
Status? Will debtors try for CARES Act treatment?

Tentative for 7/15/20:
The debtor should respond to the Trustee's question. Is extension under CARES Act a feasible solution?

Tentative for 6/17/20:

Trustee questions whether the loss in income is attributable to the COVID19 pandemic, in which case an extension is suggested per the CARES Act. However, debtor seems to be arguing something different, i.e. loss of a contractor's license. More information on this question is requested. No tentative.

Party Information

Debtor(s):

Timothy Dale Cox

Represented By

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

CONT... Timothy Dale Cox and Diane Gloria Cox

Chapter 13

Thomas E Brownfield

Joint Debtor(s):

Diane Gloria Cox

Represented By

Thomas E Brownfield

Trustee(s):

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 16, 2020

Hearing Room 5B

3:00 PM

8:16-13829 Diana Solis

Chapter 13

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

Docket 67

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification motion on file.

Party Information

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:17-10207 Christyna Lynn Gray

Chapter 13

#19.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 63

Tentative Ruling:

Tentative for 9/16/20:
Grant unless 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, September 16, 2020

Hearing Room 5B

3:00 PM

8:17-11966 Ann Ndoria Murigu

Chapter 13

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

Docket 62

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 9-15-20**

Tentative Ruling:

Party Information

Debtor(s):

Ann Ndoria Murigu

Represented By
Halli B Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:17-12477 Geraldine Arguelles

Chapter 13

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

Docket 119

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current.

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:17-12922 Jaime Guerrero

Chapter 13

#21.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))

Docket 78

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification motion on file.

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:18-10793 Angela A. Mafioli

Chapter 13

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

Docket 50

Tentative Ruling:

Tentative for 9/16/20:
Modification approved but lacking an order?

Party Information

Debtor(s):

Angela A. Mafioli

Represented By
Nathan Berneman
Nathan A Berneman

Trustee(s):

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 16, 2020

Hearing Room 5B

3:00 PM

8:18-11129 Elvin Lorenzana and Somer Asako Shimada

Chapter 13

#23.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 75

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification motion on file

Party Information

Debtor(s):

Elvin Lorenzana

Represented By
Anerio V Altman

Joint Debtor(s):

Somer Asako Shimada

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 16, 2020

Hearing Room 5B

3:00 PM

8:18-11713 Marlene C. Lewis

Chapter 13

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

Docket 128

Tentative Ruling:

Tentative for 9/16/20:

Grant unless current or modification motion on file.

Party Information

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:18-12488 Kathleen Ohara

Chapter 13

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

Docket 145

Tentative Ruling:

Tentative for 9/16/20:
Awaiting order on modification?

Party Information

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 16, 2020

Hearing Room

5B

3:00 PM

8:18-12742 Kathleen Abbey Youngsma

Chapter 13

#26.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 44

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification on file.

Party Information

Debtor(s):

Kathleen Abbey Youngsma

Represented By
John D Sarai

Trustee(s):

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 16, 2020

Hearing Room 5B

3:00 PM

8:18-12933 Vickie Ann Valdez

Chapter 13

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

Docket 39

Tentative Ruling:

Tentative for 9/16/20:

Grant unless current or modification motion on file.

Party Information

Debtor(s):

Vickie Ann Valdez

Represented By

Misty A Perry Isaacson

Trustee(s):

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 16, 2020

Hearing Room 5B

3:00 PM

8:18-13237 William Rafael Castro and Marylyn Helen McCormack De

Chapter 13

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

Docket 76

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification on file.

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, September 16, 2020

Hearing Room

5B

3:00 PM

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

Chapter 13

#28.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 8-19-20)

Docket 65

Tentative Ruling:

Tentative for 9/16/20:
Continue to coincide with modification motion 10/21.

Tentative for 8/19/20:
Grant unless current or modification motion on file.

Tentative for 7/15/20:
Same. Appearance is optional.

Tentative for 6/17/20:
Grant unless completely current. Appearance is optional.

Tentative for 4/15/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Chales Drew Simpson

Represented By
Christopher J Langley

Joint Debtor(s):

June P Simpson

Represented By

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

CONT...

Chales Drew Simpson and June P Simpson

Christopher J Langley

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:18-13722 Michael Simon

Chapter 13

#29.00 Trustee's Motion to Dismiss Case For Failure To Make Plan Payments

Docket 83

Tentative Ruling:

Tentative for 9/16/20:

Is this matter resolved by the sales order of 8/13?

Party Information

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:18-14633 Leeanne Dawn Marquez

Chapter 13

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

Docket 37

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification motion on file.

Party Information

Debtor(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, September 16, 2020

Hearing Room 5B

3:00 PM

8:19-11475 Donald A. Shorman, Jr. and Lorraine D. Shorman

Chapter 13

#31.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 35

Tentative Ruling:

Tentative for 9/16/20:

Grant unless current or modification motion on file.

Party Information

Debtor(s):

Donald A. Shorman Jr.

Represented By
Tina H Trinh

Joint Debtor(s):

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:19-11810 Helen Ojeda

Chapter 13

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

Docket 40

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification motion on file.

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, September 16, 2020

Hearing Room 5B

3:00 PM

8:19-12603 David Bergman and Anne Bergman

Chapter 13

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

Docket 64

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current.

Party Information

Debtor(s):

David Bergman

Represented By
Gary Polston

Joint Debtor(s):

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 16, 2020

Hearing Room 5B

3:00 PM

8:19-12629 Eduardo Meza

Chapter 13

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

Docket 91

Tentative Ruling:

Tentative for 9/16/20:

Grant unless current or modification motion on file.

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
Courtroom 5B Calendar**

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:19-13020 Patricia Bullock

Chapter 13

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

Docket 121

Tentative Ruling:

Tentative for 9/16/20:
Grant unless current or modification motion on file.

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
Courtroom 5B Calendar**

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:20-10008 Kennedy Clement Anyama

Chapter 13

#36.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 44

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF DEBTOR'S
MOTION UNDER LOCAL BANKRUPTCY RULE 3015-1 (N) AND (W) TO
MODIFY PLAN OR SUSPEND PLAN PAYMENTS FILED 9/9/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kennedy Clement Anyama

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, September 16, 2020

Hearing Room

5B

3:00 PM

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

Chapter 13

#37.00 Second Fee Application For Compensation For Period: 8/23/2019 to 6/30/2020:

RICK AUGUSTINI, FOR JAMES G. CARINGELLA, SPECIAL COUNSEL FOR DEBTOR

FEE: \$28912.50

EXPENSES \$360.17

RICK AUGUSTINI, SPECIAL COUNSEL FOR KATHLEEN J. CARINGELLA, DEBTOR Period: 11/24/2019 to 6/30/2020,

FEE: \$4785.00

EXPENSES: \$53.10

Docket 114

Tentative Ruling:

Tentative for 9/16/20:

Grant. Declaration of non-opposition from client required (or other explanation).

Party Information

Debtor(s):

James G. Caringella

Represented By
Kelly H. Zinser
Rick Augustini

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

CONT... James G. Caringella and Kathleen J. Caringella

Chapter 13

Joint Debtor(s):

Kathleen J. Caringella

Represented By
Kelly H. Zinser
Rick Augustini

Trustee(s):

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 16, 2020

Hearing Room

5B

3:00 PM

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

Chapter 13

#38.00 Amended Objection To Claim Number 11 by Claimant Golden Star Development, Inc.

Docket 101

Tentative Ruling:

Tentative for 9/16/20:

This is an objection to allowance of this post-petition claim as an administrative claim. As §503 makes clear, the timing of a claim is only one element leading to allowance of a claim as administrative one entitled to receive money from property of the estate. There is little or no showing how or why this claim was a value conferred upon and necessary for the administration of the estate. To be clear, it might be a righteous obligation for which debtors are responsible, and it might have created a lien; it just might not be part of the Trustee's job to pay as part of the administration. The court makes no finding on the questions of whether the claim is valid (but non administrative) or secured, and discharge is not implicated. The court is in any event inclined to defer to the Superior Court proceeding currently pending to make the factual determinations. Sustain.

Party Information

Debtor(s):

Edward Michael Worrel

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eunice Santos Worrel

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:20-10483 Theresa Sanchez Tuckman

Chapter 13

#39.00 Debtor's Objection To Proof of Claim #5-1 Filed By The County Of Orange

Docket 27

Tentative Ruling:

Tentative for 9/16/20:
Sustain.

Party Information

Debtor(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:20-10483 Theresa Sanchez Tuckman

Chapter 13

#40.00 Debtor's Objection To Proof Of Claim #15-1 Filed By The PennyMac Loan Services, LLC

Docket 28

Tentative Ruling:

Tentative for 9/16/20:
Sustain.

Party Information

Debtor(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, September 16, 2020

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#41.00 Amended Motion (related document(s): 114 Motion for Authority to Distribute Funds

Docket 115

Tentative Ruling:

Tentative for 9/16/20:
No tentative.

Party Information

Debtor(s):

Diane Weinsheimer	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 1675 Calendar**

Thursday, September 17, 2020

Hearing Room 1675

11:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1603779697>

ZoomGov meeting number: 160 377 9697

Password: 153258

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Thursday, September 17, 2020

Hearing Room 1675

11:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, September 17, 2020

Hearing Room

5B

11:00 AM

8:20-10295 Katangian Vail Avenue Property Investments, LLC a

Chapter 11

**#1.00 Motion for an Order Requiring Immediate Surrender of Property, an OSC RE Contempt, and Related Relief
(OST signed 9-9-2020)**

Docket 62

Tentative Ruling:

Tentative for 9/17/20:

No tentative. Is this really a bankruptcy issue?

Party Information

Debtor(s):

Katangian Vail Avenue Property

Represented By
Michael R Totaro

Movant(s):

Razmer #3, LLC

Represented By
Johnny White

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

Thursday, September 17, 2020

Hearing Room

5B

11:00 AM

8:20-11154 1141 South Taylor Avenue, LLC

Chapter 11

#2.00 Motion for an Order Requiring Immediate Surrender of Property, an OSC RE Contempt, and Related Relief
(OST signed 9-9-2020)

Docket 37

Tentative Ruling:

Tentative for 9/17/20:
See #1.

Party Information

Debtor(s):

1141 South Taylor Avenue, LLC

Represented By
Michael R Totaro

Movant(s):

Razmer #3, LLC

Represented By
Johnny White

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1605605088>

ZoomGov meeting number: 160 560 5088

Password: 673652

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

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- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

8:20-11784 Melissa Ann Belanger

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**CHI FAMILY LIMITED PARTNERSHIP
Vs.
DEBTOR**

Docket 24

Tentative Ruling:

Tentative for 9/22/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Melissa Ann Belanger Pro Se

Movant(s):

Chi Family Limited Partnership 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, September 22, 2020

Hearing Room 5B

10:30 AM

8:15-15694 David Francis Theriot and Donna June Gibbs

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**BALBOA THRIFT & LOAN
Vs.
DEBTOR**

Docket 51

Tentative Ruling:

Tentative for 9/22/20:
Grant absent current status post-petition or stipulated APO.

Party Information

Debtor(s):

David Francis Theriot

Represented By
Joseph A Weber

Joint Debtor(s):

Donna June Gibbs

Represented By
Joseph A Weber

Movant(s):

Balboa Thrift & Loan

Represented By
Keith E Herron

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

8:18-10215 Isabel Garcia Rainey

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 8-18-20 per order granting stip. cont. hrg re: mtn entered
8-14-20)

CITIMORTGAGE, INC.
Vs.
DEBTOR

Docket 50

***** VACATED *** REASON: CONTINUED TO 10-13-20 AT 10:30 A.M.
PER ORDER ON STIPULATION TO CONTINUE HEARING ON
MOTION FOR RELIEF FROM AUTOMATIC STAY ENTERED 9-18-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isabel Garcia Rainey

Represented By
Craig J Beauchamp

Movant(s):

CitiMortgage, Inc.

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, September 22, 2020

Hearing Room 5B

10:30 AM

8:18-13486 Jesus Gabriel Vargas

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 8-18-20)

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR**

Docket 65

Tentative Ruling:

Tentative for 9/22/20:
Grant absent stipulation to APO. Appearance is optional.

Tentative for 8/18/20:
Status? Grant absent APO. Appearance is optional.

Tentative for 7/14/20:
Grant absent APO stipulation or loan current post confirmation.

Party Information

Debtor(s):

Jesus Gabriel Vargas

Represented By
Lisa F Collins-Williams

Movant(s):

U.S. Bank National Association, not

Represented By
Sean C Ferry
Erin Elam

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

CONT... Jesus Gabriel Vargas

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, September 22, 2020

Hearing Room 5B

10:30 AM

8:18-13515 Alan Joseph Copeland and Judith Ann Copeland

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**FORETHOUGHT LIFE INSURANCE COMPANY
Vs
DEBTORS**

Docket 36

Tentative Ruling:

Tentative for 9/22/20:
Grant absent stipulation to APO. Appearance is optional.

Party Information

Debtor(s):

Alan Joseph Copeland

Represented By
Steven A Alpert

Joint Debtor(s):

Judith Ann Copeland

Represented By
Steven A Alpert

Movant(s):

Forethought Life Insurance

Represented By
Daniel K Fujimoto

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

8:19-12279 Maria Mercedes Ibarra de Acosta

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 8-11-20)

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 34

Tentative Ruling:

Tentative for 9/22/20:
Grant absent current post petition status or APO.

Appearance is optional.

Tentative for 8/11/20:
Grant absent status of current post confirmation or stipulation to APO.

Appearance is optional.

Party Information

Debtor(s):

Maria Mercedes Ibarra de Acosta

Represented By
Benjamin R Heston

Movant(s):

WELLS FARGO BANK,

Represented By

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

CONT... Maria Mercedes Ibarra de Acosta

Chapter 13

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, September 22, 2020

Hearing Room 5B

10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

**SECURED CREDITOR POPPY BANK
Vs.
DEBTORS**

Docket 32

***** VACATED *** REASON: CONTINUED TO 10-06-20 AT 10:30 A.M.
PER ORDER UPON STIPULATION TO CONTINUE HEARING DATE
ON SECURED CREDITOR POPPY BANK'S MOTION FOR RELIEF
FROM STAY ENTERED 9-21-20**

Tentative Ruling:

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Movant(s):

Poppy Bank

Represented By
Mitchell B Greenberg

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson

Chapter 13

#8.00 Motion for Adequate Protection , or in the Alternative, Relief from Automatic Stay

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTORS**

Docket 52

Tentative Ruling:

Tentative for 9/22/20:
Grant absent APO. Appearance is optional.

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):

Deutsche Bank National Trust

Represented By
Merdaud Jafarnia
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, September 22, 2020

Hearing Room 5B

10:30 AM

8:20-11909 Ultimate Franchises, Inc.

Chapter 7

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

MICHAEL JOHN PATTERSON AND WHEATSTRONG ENTERPRISES
Vs
DEBTOR

Docket 12

Tentative Ruling:

Tentative for 9/22/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Ultimate Franchises, Inc.

Represented By
Timothy McFarlin

Movant(s):

Wheatstrong Enterprises

Represented By
Eric A Mitnick

Michael John Patterson

Represented By
Eric A Mitnick

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Tuesday, September 22, 2020

Hearing Room 5B

11:00 AM

8:18-14602 Susan D Aronson

Chapter 7

#10.00 Motion For Accounting And Turnover Of Homestead Exemption Funds After
Expiration Of Reinvestment Period

Docket 96

Tentative Ruling:

Tentative for 9/22/20:
Grant.

Party Information

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

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

Tuesday, September 22, 2020

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#11.00 Debtor's Motion to Convert Case From Chapter 7 to 11.

Docket 122

Tentative Ruling:

Tentative for 9/22/20:

The problem with this motion is that it is completely unsupported by any evidence. At most the declarations attest to a desire to explore a Chapter 11 plan but absolutely no details are given as to how that might be accomplished. It is also obvious that the conversion attempt is connected to the Trustee's motion to sell assets (see #12), so it would appear that the real motivation for this conversion attempt is to frustrate/block the Trustee's sale motion or other efforts to liquidate. While the court always prefers the good faith attempts of debtors to reorganize, this should not be mistaken for naivete. The Marrama case makes abundantly clear that good faith is a necessary prerequisite to conversion into a reorganization chapter. Such inquiry is heightened when it looks like a ploy to evade the trustee. Debtor might have made a closer case if she had given even the most basic explanation of just how she would manage this reorganization at this late date, and no idle promise of 120%+ or other of the moon and stars can convince under these circumstances, where concrete facts are what is needed.

Deny.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer
Michael Jones

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, September 22, 2020

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#12.00 Trustee's Motion For Order: Authorizing Sale Of Litigation Rights (A) Outside The Ordinary Course Of Business; (B) Free And Clear Of Liens; (C) Subject To Overbids; And (D) For Determination Of Good Faith Purchaser Under Section 363(M)
(cont'd from 9-08-20 per order on stip request to cont the hrg date for the tr's mtn for order authorizing sale of litigation entered 8-28-20)

Docket 117

Tentative Ruling:

Tentative for 9/22/20:

The court had two concerns regarding this motion: (1) what is that is proposed to be sold, precisely described?, and (2) if the assets sold include trustee's avoidance powers under §§544,547,548 or 549, would the buyer have standing to pursue the actions post sale? On the second question there seems to be adequate authority in the Ninth Circuit supporting a conclusion that prudential standing would exist since, indisputably, creditors do benefit from the price, although the issue could have been more clear had there been a promised "rebate" of some portion of any proceeds to ensure that creditors got paid in full if, after administrative claims, the price is not sufficient to take out all unsecured claims. *See Brookview Apts., LLC v. Hoer (In re Weigh)*, 576 B.R. 189, 205-06 (Bankr. C.D. Cal. 2017) citing *Duckor Spradling & Metzger v. Baum (In re P.R.T. C. Inc.)*, 177 F.3d 774, 780-82 (9th Cir. 1999). But the first question remains. The description is vague in that inclusion of all rights of action, including trustee avoidance actions, is only one possible interpretation. From what is outlined in the motion it looks like the proposed actions would be in the nature of avoiding certain transactions as fraudulent conveyances, and possibly another as a post-petition transfer (honoring of a check post-petition), but the language used in the motion is susceptible to interpretation. The court will hear argument but is inclined to continue for clarification on this point, and possible re-noticing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By

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

Tuesday, September 22, 2020

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Matthew C Mullhofer

Chapter 7

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, September 22, 2020

Hearing Room 5B

11:00 AM

8:20-10045 Young Ha Kim

Chapter 7

#12.10 Motion For Protective Order To Restrict Access To Filed Document Containing Personal Data Identifiers

Docket 58

Tentative Ruling:

Tentative for 9/22/20:
Grant.

Party Information

Debtor(s):

Young Ha Kim

Represented By
Christian T Kim

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Tuesday, September 22, 2020

Hearing Room 5B

11:00 AM

8:09-22699 Cheri Fu

Chapter 7

#13.00 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 3-10-2020 per order approving stipulation entered 3-3-2020)

Docket 383

***** VACATED *** REASON: CONTINUED TO 1-26-2021 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON APPLICATION FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM ENTERED 7-30-20**

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, September 22, 2020

Hearing Room 5B

11:00 AM

8:13-16077 John M McWilliams

Chapter 7

#14.00 Motion for Order Re: (1) Alleged Contemnors Violation of the Discharge Injunction under Section 524 of the Bankruptcy Code; (2) Civil Contempt Against All Alleged Contemnors for Violating the Discharge Injunction Pursuant to the Bankruptcy Code and Rule 9020 of the Federal Rules of Bankruptcy Procedure; (3) Damages, Including Attorney's Fees and Sanction and Punitive Damages

Docket 27

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOTION RE: MOTION FOR CONTEMPT RE:
ALLEGED CONTEMNORS' VIOLATION OF THE DISCHARGE
INJUNCTION (ECF DOCKET NO. 27) FILED 8-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John M McWilliams

Represented By
Thomas J Polis

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**

Wednesday, September 23, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1619762093>

ZoomGov meeting number: 161 976 2093

Password: 497651

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Santa Ana
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Wednesday, September 23, 2020

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5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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CONT...

- NONE LISTED -

Chapter

**United States Bankruptcy Court
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Wednesday, September 23, 2020

Hearing Room 5B

10:00 AM

8:20-12278 Bryan Joseph Klinger

Chapter 11

#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.

Docket 1

Tentative Ruling:

Tentative for 9/23/20:

Deadline for filing plan and disclosure statement: January 29, 2021

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

Debtor to give notice of the deadline by: September 28, 2020.

Party Information

Debtor(s):

Bryan Joseph Klinger

Represented By
Illyssa I Fogel

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

Wednesday, September 23, 2020

Hearing Room 5B

10:00 AM

8:17-14351 Freda Philomena D'Souza

Chapter 11

#2.00 Motion Pursuant To 11 USC 1142 and 11 USC 105 to Require Creditor To Complete Novation Contained Within The Confirmed Chapter 11 Plan
(cont'd from 7-22-20)

Docket 149

Tentative Ruling:

Tentative for 9/23/20:
Grant absent compelling showing for either denial or further delay.

Tentative for 7/22/20:
Creditor requests a continuance. The court will grant a continuance to a convenient date.

Party Information

Debtor(s):

Freda Philomena D'Souza

Represented By
Michael Jones
Sara Tidd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, September 23, 2020

Hearing Room 5B

10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

#3.00 Plan Agent's Motion For Entry of Final Decrees Closing These Bankruptcy Cases and Authorizing Final Distributions

Docket 128

Tentative Ruling:

Tentative for 9/23/20:
Grant.

Party Information

Debtor(s):

Sococo, Inc.

Represented By
Ron Bender
Krikor J Meshefejian
Lindsey L Smith

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, September 23, 2020

Hearing Room 5B

10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

**#3.10 Post- Confirmation Status Conference Hearing Re: Chapter 11 Plan
(set from confirmation hrg held on 7-18-19)
(cont'd from 9-9-20)**

Docket 32

Tentative Ruling:

Tentative for 9/23/20:
See #3.

Tentative 9/9/20:
Continue to coincide with final decree motion scheduled 9/23 @ 10:00 a.m.

Tentative for 4/29/20:
Continue approximately 4 months with expectation of a motion for final
decree in meantime.

Appearance is optional.

Tentative for 12/11/19:
Continue to April 30, 2020. Court expects a final decree motion in interim.
Appearance waived.

Tentative for 7/18/19:

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CONT... **Sococo, Inc.**
No tentative.

Chapter 11

Tentative for 7/2/19:
No tentative.

Party Information

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
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Wednesday, September 23, 2020

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10:00 AM

8:19-12512 Sococo, Inc.

Chapter 11

#4.00 Motion For An Order Disallowing Proof Of Claim No. 2 (As Amended) Filed By Department Of Treasury - Internal Revenue Service Against Visiblegains, Inc (cont'd from 7-22-20)

Docket 85

***** VACATED *** REASON: ORDER APPROVING STIPULATION
RESOLVING ALL ISSUES RE: MOTION FOR AN ORDER
DISALLOWING PROOF OF CLAIM NO. 2 (AS AMENDED) FILED BY
DEPARTMENT OF TREASURY INTERNAL REVENUE SERVICE
AGAINST VISIBLEGAINS, INC. ENTERED 9/9/2020**

Tentative Ruling:

Tentative for 7/22/20:

Several continuances have already been granted regarding processing of a form 940. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

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
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Wednesday, September 23, 2020

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10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#5.00 Application For Payment Of: Final Fees And/Or Expenses (11 U.S.C.§ 330) for Period Of:

THOMAS B. URE, DEBTOR'S ATTORNEY

FEE: \$111,475.00

EXPENSE: \$1405.29

Docket 154

Tentative Ruling:

Tentative for 9/23/20:
Allow as prayed.

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure
George C Lazar

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

10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

#6.00 First And Final Application For Compensation For Period: 10/31/2019 to 8/19/2020:

MENCHACA & COMPANY LLP, ACCOUNTANT

FEE: \$70,684.50

EXPENSES: \$127.20

Docket 156

Tentative Ruling:

Tentative for 9/23/20:

Allow as prayed subject to declaration of non-opposition from debtor as required by LBRs, to be submitted with order.

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure
George C Lazar

**United States Bankruptcy Court
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Santa Ana
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Wednesday, September 23, 2020

Hearing Room 5B

10:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#7.00 Motion For An Order Approving an Extension Of The Court's Deadline To File A Plan And Disclosure Statement By Sixty (60) Days

Docket 91

Tentative Ruling:

Tentative for 9/23/20:

Grant, but further extensions should not be expected.

Party Information

Debtor(s):

Rafik Youssef Kamell

Represented By
Robert P Goe

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10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#8.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 7-22-20 per stip. to cont. hrgs entered 7-02-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-02-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: CHAPTER 11 STATUS CONFERENCE; MOTION FOR RELIEF
STAY; MOTION TO DISMISS CHAPTER 11 CASE AND OBJECTION TO
AMEND NOTICE OF SETTING INSIDER COMPENSATION ENTERED 9
-09-20**

Tentative Ruling:

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

**United States Bankruptcy Court
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10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#9.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 7-22-20 per order apprv g stip. to cont. hrgs, entered 7-02-20)

Docket 54

***** VACATED *** REASON: CONTINUED TO 12-02-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: CHAPTER 11 STATUS CONFERENCE; MOTION FOR RELIEF
STAY; MOTION TO DISMISS CHAPTER 11 CASE AND OBJECTION TO
AMEND NOTICE OF SETTING INSIDER COMPENSATION ENTERED 9
-09-20**

Tentative Ruling:

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

1. Basic Background Facts

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately \$42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than \$25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not

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CONT... Bridgemark Corporation

Chapter 11

appear to be any other debts listed as disputed, contingent, or unliquidated. The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court trial this testimony was elicited:

"We cannot pay the 27 million We have no ability to pay any of this. ... I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done."
Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the \$27 million in compensatory damages at \$1 million per year, interest-free, over 27 years. See *Id.* at 3156:20-23 ["We can't pay it. ... If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.... It just goes down and down and down." *Id.* at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

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CONT... **Bridgemark Corporation**

Chapter 11

2. Motion to Dismiss & Relief from Stay Standards

Section 1112(b) of the Bankruptcy Code provides:

"[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id.* § 1112(b)(4)(A), and "gross mismanagement of the estate," *Id.* § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section ... for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals

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Chapter 11

as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.']. Thus, the shorthand phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or feelings. Instead, the question is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.*

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. See e.g., *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the

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CONT...

Bridgemark Corporation
litigation"; and

Chapter 11

- "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes and citations omitted).

"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood)*, 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

3. Was Debtor's Petition Filed for a Proper Purpose?

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917–18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032,

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Chapter 11

1048 (9th Cir. 2013) where the court found:

Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the judgment or cover the cost of a supersedeas bond. The bankruptcy court found that the Fraud Judgment amounted to over \$12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id.* It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying

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Chapter 11

a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation." *Marshall*, 721 F.3d at 1048 (quoting 298 B.R. at 681)). PDC persuasively argues that it would be inappropriate to infer a broader rule from *Marshall*. PDC argues with some persuasion that the other cases cited by Debtor were ones in which the courts based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id.* at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id.*

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately \$3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id.* at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id.* The debtor later amended his plan to provide that if the judgment were upheld on appeal, he

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Chapter 11

would liquidate his assets and give the proceeds to the judgment creditor. *Id.* The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of the circumstances" warranted dismissal of the case for cause. *Id.* at *4.

PDC argues that Debtor has admitted in the authorizing resolution attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11" Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. After all, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to make a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), *aff'd*, 565 B.R. 527 (S.D.N.Y. 2017), *aff'd*, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets" As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26,

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CONT... **Bridgemark Corporation**
2011).

Chapter 11

PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with competing demands to Debtor's assets. All other claims against Debtor are *de minimis* relative to the Judgment, and also appear to be undisputed. Cf. *In re Mense*, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately \$4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than \$700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current

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CONT... Bridgemark Corporation

Chapter 11

case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a reorganization is likely not feasible due to the enormous judgment debt and Debtor's ever diminishing product source. The court is also not impressed with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this

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Chapter 11

assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable extension to answer these questions about just how probable a reorganization is or can be despite these obstacles. In this the court is uninterested in platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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8:20-10143 Bridgemark Corporation

Chapter 11

#10.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 7-22-20 per order apprvng stip. to cont. hrgs entered 7-02-20)

Docket 93

***** VACATED *** REASON: CONTINUED TO 12-02-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: CHAPTER 11 STATUS CONFERENCE; MOTION FOR RELIEF
STAY; MOTION TO DISMISS CHAPTER 11 CASE AND OBJECTION TO
AMEND NOTICE OF SETTING INSIDER COMPENSATION ENTERED 9
-09-20**

Tentative Ruling:

Tentative for 3/25/20:

Stipulation to continue to 4/29/20 expected per phone message. Status?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#11.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 7-22-20 per order approving stip, to cont, hrgs entered
7-02-20)

PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR

Docket 53

*** VACATED *** REASON: CONTINUED TO 12-02-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: CHAPTER 11 STATUS CONFERENCE; MOTION FOR RELIEF
STAY; MOTION TO DISMISS CHAPTER 11 CASE AND OBJECTION TO
AMEND NOTICE OF SETTING INSIDER COMPENSATION ENTERED 9
-09-20

Tentative Ruling:

Tentative for 2/26/20:

If all that is requested is that both sides be free to complete the state court
action, including post trial motions and appeals, to final orders, that is
appropriate. Enforcement stes will require further orders of this court.

Grant as clarified.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

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10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#12.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 7-22-20 per order on stip to further cont s/c entered 7-02-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 2, 2020 AT
10:00 A.M. PER ORDER ON STIPULATION TO FURTHER CONTINUE
HEARING ON INITIAL STATUS CONFERENCE ENTERED 9/9/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Defendant(s):

Placentia Development Company

Pro Se

Plaintiff(s):

Bridgemark Corporation

Represented By
Erin E Gray
James KT Hunter
William N Lobel

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Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1606690540>

ZoomGov meeting number: 160 669 0540

Password: 034379

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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10:00 AM

8:18-10486 Ron S Arad

Chapter 11

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

- #1.00** 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 6-24-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-07-20 AT 10:00 A.M.
PER SCHEDULING ORDER AND ORDER APPROVING ADEQUACY
OF INDIVIDUAL DEBTOR'S DISCLOSURE STATEMENT ENTERED 7-
06-20**

Tentative Ruling:

Tentative for 6/24/20:

Would the parties prefer this be set for pretrial conference now, or continued as a status conference allowing a second attempt at mediation?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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CONT... Ron S Arad

Chapter 11

Tentative for 2/26/20:
Status? Would ordered mediation help?

Tentative for 12/11/19:
Further status report is needed. For example, IRS is still a defendant.

Tentative for 9/11/19:
Off calendar? See #9

Tentative for 9/4/19:
Does #7 resolve this?

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.

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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.

Party Information

Debtor(s):

Ron S Arad

Represented By
William H Brownstein

Defendant(s):

DEPARTMENT OF THE
UNITED STATES OF AMERICA

Pro Se
Represented By
Jolene Tanner

Plaintiff(s):

Ron S Arad

Pro Se

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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.

**#2.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 5-14-20 per order appr. sixth stip to cont. s/c entered 3-20-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTEND DEADLINE TO RESPOND TO
COMPLAINT ENTERED 9-16-20**

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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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.

**#3.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 7-23-20 per order approving stip to cont. s/c entered 7-16-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 9-17-20**

Tentative Ruling:

Tentative for 6/27/19:
Why no status report?

Party Information

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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10:00 AM

8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

#4.00 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 8-13-20)**

Docket 1

Tentative Ruling:

Tentative for 9/24/20:
See #5.

Tentative for 8/13/20:
See #2.

Tentative for 7/23/20:
Status?

Tentative for 6/25/20:
See #17.

Tentative for 4/29/20:
Status?

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CONT... Richard Paul Herman

Chapter 7

Tentative for 3/26/20:
See # 12-14.

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
Jeanne M Jorgensen

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

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8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

- #5.00** Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay
(set by Order entered 3-18-20)
(cont'd from 8-13-20)

Docket 113

Tentative Ruling:

Tentative for 9/24/20:

This matter is distressing in that the court's sanctions orders reportedly remain unpaid, and debtor makes no showing of impossibility on payment, which might theoretically have been a defense to further contempt. He apparently just refuses to pay. That might be remedied if the levies undertaken by Foothill bear fruit, but nothing on that subject appears in the papers. But it does cause the court to wonder what, if anything, would be accomplished by upping the monetary sanction further. Foothill suggests that defiance is ongoing in the Third Amended Complaint in state court in that Sabrina Herman reiterates what Foothill characterizes as the same emotional damages claims as were already the subject of what the Trustee sold to Foothill. That is not so clear. Although as drafted the Third Amended Complaint recites at length the sad ten-year history of this dispute (to which end is not made clear) the prayer seems focused on the personal property (plants and urn), and any consequential damages that might emanate therefrom. So construed that might not violate this court's earlier order except that the court seems to remember a monetary cap, but it is not sure whether that relates to the possibility of emotional distress damages based on conversion of personalty (if such thing exists in California law). Presumably Sabrina Herman, and her husband acting as lawyer, will argue that the long recital of history in the Third amended Complaint is not an attempt to reopen the causes of action already sold but just to inform the state court on background. The court does observe this is now in limited jurisdiction court so there might be a de facto lid on damages in any event. So, the parties are invited to explain exactly how this conduct continues to violate this court's previous orders in such a way as to constitute ongoing contempt. But failure

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CONT... Richard Paul Herman

Chapter 7

to pay what is already ordered is still an open question on that point.

No tentative.

Tentative for 8/13/20:

The sanction was doubled at the 7/23 hearing but reportedly nothing has been paid in whole or in part of any portion. Even more grave is the report that the Hermans have filed a motion before the state court for leave to amend the complaint which, although seemingly labelled as confined to negligent destruction of personal property, nevertheless asserts millions in damages for emotional distress and punitive damages, which, as a whole, seems a thinly disguised re-assertion of claims this court has already ruled were owned by the estate and sold by its trustee to Foothill. But, reportedly, the state court has relegated the amendment motion for the limited jurisdiction court to decide. Depending on how that goes it would seem that these proposed amendments may not be allowed, or at least not allowed consistent with the jurisdiction of that court deciding the question, and thus effectively foreclosed. In either case, it would seem that Mr. Herman does not intend to accept this court's decisions. The court is inclined to see whether the amendment is allowed by the limited jurisdiction court before assessing whether yet more sanctions or other measures are warranted.

Tentative for 7/23/20:

New for 7/23: Mr. Herman's objection to order for sanctions and stay of proceedings pending appeal. Mr. Herman argues that he has appealed this court's contempt order, which divests this court of jurisdiction. This objection was filed on 6/26/20.

The objection is linked to the notice of lodgment of the order requiring Herman to pay \$2,000 as a sanction for his continuing violation of this court's May 11, 2020 contempt order.

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CONT... **Richard Paul Herman**

Chapter 7

Foothill and the Chapter 7 Trustee have filed a joint supplemental report noting Mr. Herman's continuing noncompliance. Per the report, Mr. Herman is continuing his campaign in state court asserting that this wife may make claims beyond that which this court set forth. The state court has apparently issued an OSC re dismissal and a separate OSC regarding the court's proposed transfer of the Surviving Claims to a court of limited jurisdiction (i.e. claims for damages of less than \$25,000). These matters are set for hearing on August 7, 2020. Unsurprisingly, Mr. Herman has also failed to pay the sanction to Foothill as ordered.

Regarding Mr. Herman's assertion that the appeal divests this court of jurisdiction over the contempt order, Foothill cites *Hoffman v. Beer Drivers and Salesmen's Local Union No. 88*, 536 F.2d 1268, 1276 (9th Cir. 1976) for the proposition that, in the context of contempt proceedings like the ones here, "where the court supervises a continuing course of conduct and where as new facts develop additional supervisory action by the court is required, an appeal from the supervisory order does not divest the [court] of jurisdiction to continue its supervision, even though in the course of that supervision the court act upon or modifies the order from which the appeal is taken." Trustee further cites *Hughes v. Sharp*, 476 F.2d 975 (9th Cir. 1973), where the court noted, that when the contemnor is a party to the pending proceedings, and when those proceedings are still under way, the court lacks jurisdiction to consider the purported appeal from a contempt order as that order is interlocutory. The court stated that although this may seem harsh, a contemnor is not without recourse, as among his options is purging his contempt. *Id.* Foothill also notes that the notice of appeal was untimely and that a new appeal cannot be initiated by simply amending the notice of appeal; a new notice of appeal is required.

By contrast, Mr. Herman's objection is completely devoid of analysis and contains only vague citations to cases standing for the broad proposition that an appeal divests the bankruptcy court of jurisdiction over those aspects of the case involved in the appeal. But those cases cited by Mr. Herman do not undercut the cases cited by Foothill. Mr. Herman has not filed anything responsive to Foothill's supplemental report.

The message that the court sent to Mr. Herman at the last hearing on 6/25

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10:00 AM

CONT...

Richard Paul Herman

Chapter 7

was apparently not received, even when Mr. Herman was unambiguously ordered to pay a sanction of \$2,000 to Foothill to put a sharper point on the message. Mr. Herman seems to be operating on the misguided assumption that his appeal puts him out of reach of this court, leaving him free to pursue conduct this court has already characterized as contumacious. However, as the case law cited above demonstrates, the court remains vested with the power to monitor Mr. Herman's ongoing misconduct, and modify the contempt order as necessary.

The court has already noted that Mr. Herman is playing with fire by continuing to ignore this court's orders. It does not appear, however, that Mr. Herman is altering his course. Rather, he persists, relying on legalistic arguments about finality of orders which, as explained above, are not persuasive. But this course is causing real, continuing damages to Foothill. So, the court has little choice but to raise the stakes in hopes of reaching the requisite coercion threshold. The sanction is doubled to \$4,000, payable forthwith to Foothill. The court notes that the Superior Court has now also scheduled this matter on order to show cause for August 7, 2020. A further hearing will be scheduled for a mutually convenient date after August 7 to evaluate where we stand and whether yet more coercion is needed.

Tentative for 6/25/20:

Following the hearing on the OSC re: Contempt on April 29, Foothill Financial and Trustee jointly lodged an order on April 30. The official order issued on May 11. Mr. Herman filed an untimely objection to the lodged order.

To accompany his objection to the lodged order, Mr. Herman attached his own proposed order, which bears little resemblance to the actual ruling on the OSC and several other orders issued by this court.

The most consequential rewrite Mr. Herman makes to his proposed order is where he states that per our abstention order, he is allowed to pursue in state court all claims that may belong solely to his wife with no limit on value. This is despite the many orders issued by this court where the specific claims the

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court abstained from are listed. Foothill's response catalogues the various orders and judgments with the court's very clear language articulating the narrow scope of its abstention.

Mr. Herman appears to have seized upon the most miniscule ambiguity to deliberately disregard the language and spirit of this court's orders in an attempt to reframe his dismissed claims as belonging solely to his wife, thereby allowing him to re-litigate them in state court. Mr. Herman may have already filed a version of his order with the state court. Foothill and Trustee are understandably dismayed by this latest attempt to hinder and delay.

In light of this most recent and fairly egregious transgression, Foothill requests that the court now impose monetary sanctions. Foothill suggests that Mr. Herman should pay the fees incurred by Foothill as a result of Mr. Herman's ongoing contempt, which Foothill estimates in its status report at \$7,500.

Mr. Herman has filed his own status report asserting that the contempt order is on appeal and there is nothing else to be adjudicated by this court at this time, all matters now being with the district court.

Mr. Herman is playing with fire. Rather than displaying even a modicum of compunction after being adjudged to be in contempt, Mr. Herman asserts in his objection that his contempt is now purged, and that it never truly existed in the first place. Mr. Herman, we should not forget, is also an attorney, and is presumed to be able to understand court orders and the consequences for disregarding them. Thus, a measured and modest monetary sanction is likely appropriate, with the promise of more severe sanctions to follow if Mr. Herman continues to misconduct himself.

The court requests an update on whether Mr. Herman actually lodged a bogus form of order with the state court. Impose monetary sanctions of \$2000 payable jointly to Foothill and Trustee.

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Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

(a) Why he should not be held in contempt for

i. his continuing efforts to exercise control over and interfere with the dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and

ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.

(b) Why he should not be subjected to the following sanctions:

i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and

ii. Compensatory damages incurred by Foothill and the Trustee as a result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely responses.

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Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the Trustee has sought damages under 11 U.S.C. § 362(k), but rather this proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for

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this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted). Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2) affirming to the State Court that the only cause of action that the Hermans assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "claim for

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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) Debtor's "claim 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."

2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

Party Information

Debtor(s):

Richard Paul Herman

Represented By

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Chapter 7

Michael Jones
Sara Tidd
Richard P Herman

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

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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
(cont'd from 7-23-2020 per order continuing s/c entered 7-08-20)**

Docket 1

Tentative Ruling:

Tentative for 9/24/20:

It seems to the court that no substantive contribution is made from defendant in the status report.

Deadline for completing discovery: January 31, 2021

Last date for filing pre-trial motions: February 12, 2021

Pre-trial conference on: February 25, 2021 @ 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 2, 2021.

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

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

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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#: 8:19-01143 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 7-8-20 per order continuing s/c entered 7-08-20)**

Docket 1

Tentative Ruling:

Tentative for 9/24/20:
Same dates as #6.

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

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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.

**#8.00 STATUS CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(cont'd from 7-23-20 per order continuing s/c entered 7-8-20)**

Docket 1

Tentative Ruling:

Tentative for 9/24/20:
Same dates as #6.

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

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8:19-12795 Lorraina C. Navarette

Chapter 7

Adv#: 8:19-01209 Lindbergh v. Navarette

#9.00 CONT STATUS CONFERENCE RE: Complaint re: Objection/recovation of discharge under section 727(c)(d)(e) and Dischargeability under section 523(a) (6), willful and malicious injury
**[Another summons issued on 1/21/2020]
(case reassigned per administrative order 20-07 dated 7-15-2020)**

[fr: 1/21/20, 4/7/20, 6/23/20]

Docket 3

Tentative Ruling:

Tentative for 9/24/20:
why no status report?

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Lorraina C. Navarette

Represented By

Patricia M Ashcraft - SUSPENDED BK -

Defendant(s):

Lorraina C Navarette

Pro Se

Plaintiff(s):

Carl Lindbergh

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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10:00 AM

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

Chapter 11

Adv#: 8:15-01293 Martz-Gomez v. Anna's Linens, Inc.

#10.00 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 7-23-20 per order approving stipulation entered 6-26-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 3, 2020 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 9/10/2020**

Tentative Ruling:

Tentative for 10/8/15:
Deadline for completing discovery: June 1, 2016
Last date for filing pre-trial motions: June 20, 2016
Pre-trial conference on: July 7, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

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

Defendant(s):

Anna's Linens, Inc.

Pro Se

Plaintiff(s):

Linda Martz-Gomez

Represented By

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CONT... Anna's Linens, Inc.

Chapter 11

Gail L Chung
Jack A Raisner
Rene S Roupinian

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Michael J Hauser

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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** 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 at s/c held 8-15-19)
(cont'd from 9-10-20 per order continuance of pre-trial conf. entered 9-04-20)

Docket 1

Tentative Ruling:

Tentative for 9/24/20:

The court will spare all a long recital of the frustrations occasioned by the continued and dismal lack of cooperation in these related cases, or the parties' seeming indifference to either the court's orders or to the LBRs. The court will only state this is not the first time. Here we are, at the date of pretrial conference and we have nothing at all from the defendant, and what might be worse, no explanation either. So be it. Plaintiff's unilateral pretrial order is adopted. How the defendant can still make a case around those provisions is unclear. A trial date will be scheduled approximately three months hence. The court will hear argument whether this should be in person or via Zoom.

Tentative for 2/27/20:

This is supposed to be a pre-trial conference. Sadly, it is not that and this is hardly the first time in this series of cases where the court has been sorely frustrated.

As required by the LBRs, the parties were to have met and conferred in good faith to narrow the issues so that trial time could be focused on those items truly in dispute. Local Rule 7016-1 sets forth a very specific timeline and list of duties incumbent on each side. At LBR 7016-1(b)(1)(C) Plaintiff

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was to have initiated a meet and confer *at least 28 days* before the date set for the pre-trial conference. According to Defendant's papers, this did not occur 28 days before the originally scheduled pretrial conference of Feb. 6, *or indeed at all* until February 13 when Plaintiff reportedly filed his "Pretrial Stipulation" in which he claims it was Defendants who "refused to participate in the pretrial stipulation process" necessitating what is actually a unilateral stipulation. Defendant on the next day, February 14, filed his Unilateral Pretrial Stipulation. Defendant does acknowledge at his page 2, line1-2 that Plaintiff sent something over to Defendant on January 28, but it was reportedly "not complete in any respect." As to the original date of the Pretrial Conference of February 6, that was *very late*. Whether that document was anything close to what was later filed unilaterally on Feb. 13 is not clarified. But what is very clear is that these two unilateral "stipulations" are largely worthless in the main goal of narrowing issues inasmuch as the parties seem to be discussing two entirely different complaints. Defendant focuses on what the former trustee (now deceased) may have known about the existence of a loan undisclosed on the schedules made by Frank to WeCosign, Inc., which loan was reportedly worthless in any case, and about how that knowledge should be imputed to Plaintiff Marshack. But why the trustee's knowledge, imputed or otherwise, should justify an alleged misstatement or omission to list assets under oath, is never quite explained. One presumes Defendant will argue materiality. Plaintiff focuses on the alleged use of another corporation, Tara Pacific, as the repository of funds taken from WeCosign as an alleged fraudulent conveyance and then used by Frank and Tara as a piggy bank between 2010 and 2012 and upon alleged misstatements in the schedules about Tara's and Frank's actual average income. While this sounds like a fraudulent conveyance theory the gist seems to be that Tara and Frank were using ill-gotten gains to live on while denying in respective schedules that they had any income (or assets) thus comprising a false oath. There probably are connections between these different stories, but that is not made at all clear (and it must be made clear). Plaintiff's overlong "stipulation" is written more like a 'cut and paste' brief containing long tables with over 59 footnotes

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inserted. One presumes this represents a good faith compilation of bank records, but even that is left unclear. But the language used reads purely as advocacy, not an attempt to narrow the disputed facts in a way the other side can sign.

Buried in the Defendant's recitations (at page 4, ¶ 13) is the argument that the case should be dismissed as outside the statute of limitation (or statute of repose in Defendant's terms) described at §727(e)(1). Why this was not raised 50+ months ago when the action was filed by Rule 12(b) motion or otherwise is not explained. What the Defendant expects the court to do with this point now is also not explained.

In sum, this case is still a disorganized mess. This is not the first time the court has voiced its utter frustration with this series of cases. Rather than being ready for trial, we are very much still at the drawing board. The court is not happy about it as this is hardly a young case.

What is the remedy? The court could order sanctions against either side, or maybe both sides, and that would be richly deserved. The court could decide that Plaintiff as the party with the initial duty under the LBRs should suffer the brunt of just consequences by a dismissal, as the ultimate sanction. But however tedious and frustrating this has become the court would rather see these cases decided on their merits (if any) *if that is possible*. But what the court will not do is to further indulge these parties in disobeying the LBRs and generally continuing to shamle along, never getting anywhere.

Therefore, **it is ordered:**

1. The parties will immediately meet and confer about reducing the two unilateral 'stipulations' into an intelligible, single, useful list of items not in dispute and therefore requiring no further litigation;
2. The resulting stipulation will be concise, user-friendly and

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Tara Jakubaitis

Chapter 7

focused on the actual legal issues to be tried;

3. The stipulation will contain a concise list of exhibits to be offered at trial identified by number for Plaintiff and letter for Defendant;
4. The parties will attempt in good faith to resolve any evidentiary objections to admission of the exhibits, and if agreement cannot be reached, state concisely the reasons for or against admissibility;
5. The stipulation will contain a list of witnesses to be called by each side, with a very brief synopsis of the expected testimony;
6. All factual matters relevant and truly in dispute will be listed, by short paragraph;
7. All legal issues to be decided will be separately listed, by paragraph;
8. Any threshold issues such as Defendants argument about statute of repose will be separately listed along with a suggested means of resolving the issue; and
9. Both sides will estimate expected length of trial, mindful that the court requires all direct testimony by declaration with the witnesses available at trial for live cross and re-direct.

In sum the parties are to do their jobs. If the court's order is not followed *in enthusiastic good faith, and completely* with the goal of narrowing the issues, and if the resulting product is not a concise, user-friendly joint pretrial stipulation, the offending party or parties will be subject to severe sanctions which may include monetary awards and/or the striking or either the complaint or answer.

Continue about 60 days to accomplish the above.

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CONT... Tara Jakubaitis

Chapter 7

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 discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can be set.

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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

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

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CONT... Tara Jakubaitis

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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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8:20-10295 Katangian Vail Avenue Property Investments, LLC a

Chapter 11

#12.00 Motion for an Order Requiring Immediate Surrender of Property, an OSC RE Contempt, and Related Relief
(OST signed 9-9-2020)
(cont'd from 9-17-20)

Docket 62

Tentative Ruling:

Tentative for 9/24/20:
Status?

Tentative for 9/17/20:
No tentative. Is this really a bankruptcy issue?

Party Information

Debtor(s):

Katangian Vail Avenue Property

Represented By
Michael R Totaro

Movant(s):

Razmer #3, LLC

Represented By
Johnny White

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8:20-11154 1141 South Taylor Avenue, LLC

Chapter 11

#13.00 Motion for an Order Requiring Immediate Surrender of Property, an OSC RE Contempt, and Related Relief
(OST signed 9-9-2020)
(cont'd from 9-17-20)

Docket 37

Tentative Ruling:

Tentative for 9/24/20:
See #12.

Tentative for 9/17/20:
See #1.

Party Information

Debtor(s):

1141 South Taylor Avenue, LLC

Represented By
Michael R Totaro

Movant(s):

Razmer #3, LLC

Represented By
Johnny White

**United States Bankruptcy Court
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Tuesday, September 29, 2020

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10:30 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1617802438>

ZoomGov meeting number: 161 780 2438

Password: 748276

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Tuesday, September 29, 2020

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10:30 AM

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Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
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10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Tuesday, September 29, 2020

Hearing Room 5B

10:30 AM

8:18-14633 Leeanne Dawn Marquez

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**SANTANDER CONSUMER USA INC.
Vs.
DEBTOR**

Docket 40

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION -ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 9-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leeanne Dawn Marquez

Represented By
Matthew D. Resnik

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, September 29, 2020

Hearing Room 5B

10:30 AM

8:20-11989 Tamara Anne Jimenez

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**BRIDGEST CREDIT COMPANY, LLC
Vs.
DEBTOR**

Docket 13

Tentative Ruling:

Tentative for 9/29/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Tamara Anne Jimenez

Represented By
Steven A Alpert

Movant(s):

Bridgecrest Credit Company, LLC

Represented By
Lemuel Bryant Jaquez

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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10:30 AM

8:20-12030 Eduardo Horta

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**CREDIT UNION OF SOUTHERN CALIFORNIA
Vs.
DEBTOR**

Docket 13

Tentative Ruling:

Tentative for 9/29/20:
Continue to October 6 @ 10:30 a.m. to coincide with HOA motion.
Appearance is optional.

Party Information

Debtor(s):

Eduardo Horta

Represented By
Timothy McFarlin

Movant(s):

Credit Union of Southern California

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Richard A Marshack (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#4.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 50 Filed By Stearns Lending, LLC
(cont'd from 8-11-20 per order approving sixth stip. re: claim no. 50 entered 7-30-20)

Docket 248

*** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M.
PER ORDER APPROVING SEVENTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION ADJOURNING
THE HEARING ON THE OBJECTIONS TO AND MOTION TO
DISALLOW PROOF OF CLAIM # 50 ENTERED 9-25-20

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
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Santa Ana
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5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#5.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 51 Filed By Lakeview Loan Servicing, LLC (cont'd from 8-11-20 per ordered approving sixth stip. to cont. hrg. entered 7-30-20)

Docket 249

*** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M. PER ORDER APPROVING SEVENTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION ADJOURNING THE HEARING ON THE OBJECTIONS TO MOTION TO DISALLOW PROOF OF CLAIM #51 ENTERED 9-25-20

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
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Tuesday, September 29, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#6.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 52 Filed By First Federal Bank of Florida
(cont'd from 8-11-20 per order ent approving sixth stip. to cont. hrg entered 7-30-20)

Docket 250

***** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M.
PER ORDER APPROVING SEVENTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION ADJOURNING
THE HEARING ON THE OBJECTIONS TO AND MOTION TO
DISALLOW PROOFS OF CLAIM #52 ENTERED 9-25-20**

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
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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#7.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 53 Filed By Lakeview Loan Servicing, LLC (cont'd from 8-11-20 per order approving sixth stip. to cont. hrg clm. 53 entered 7-30-20)

Docket 251

*** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M. PER ORDER APPROVING SEVENTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION ADJOURNING THE HEARING ON THE OBJECTIONS TO AND MOTION TO DISALLOW PROOF OF CLAIM #53 ENTERED 9-25-20

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
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 54 Filed By Lakeview Loan Servicing, LLC (cont'd from 8-11-20 per order approving sixth stip. to cont. clm # 54 entered 7-30-20)

Docket 252

*** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M. PER ORDER APPROVING SEVENTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION ADJOURNING THE HEARING ON THE OBJECTIONS TO AND MOTIONS TO DISALLOW PROOFS OF CLAIM #54 ENTERED 9-25-20

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
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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#9.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 61 Filed By Lakeview Loan Servicing, LLC (cont'd from 8-11-20 per order approving sixth stip. to cont. hrg entered 7-30-20)

Docket 255

***** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M. PER ORDER APPROVING SEVENTH STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION ADJOURNING THE HEARING ON THE OBJECTIONS TO AND MOTIONS TO DISALLOW PROOF OF CLAIM #61 ENTERED 9-25-20**

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, September 29, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#10.00 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
(cont'd from 8-11-20 per order entered 8-07-20)

Docket 256

*** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M.
PER ORDER APPROVING SEVENTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORP & NATIONSTAR
MORTGAGE LLC AND MOTION TO DISALLOW PROOF OF CLAIM
NO. 62 ENTERED 9-23-20

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
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Tuesday, September 29, 2020

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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#11.00 Lexington National Insurance Corporation's Objection to and Motion to Disallow Proof of Claim No. 70 filed by Carrington Mortgage Services, LLC
(cont'd from 8-11-20 per order approving fourth stipulation re: clm no. 70 entered 7-30-20)

Docket 263

***** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND
CARRINGTON MORTGAGE SERVICES,LLC ON OBJECTION TO AND
MOTION TO DISALLOW PROOF OF CLAIM NO. #70 ENTERED 9-28-20**

Tentative Ruling:

Tentative for 2/25/20:
See #11

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
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Tuesday, September 29, 2020

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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#12.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim No.. 87 Filed By Trust Bank
(cont'd from 8-11-20 per order approving fourth stip re: claim #87 and #88 entered 8-10-20)

Docket 449

***** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND TRUST
BANK ADJOURNING THE HEARING ON THE OBJECTIONS TO
PROOFS OF CLAIM #87 ENTERED 9-28-20**

Tentative Ruling:

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
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Tuesday, September 29, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#13.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim
No. 88 Filed by Trust Bank
(cont'd from 8-11-20 per ordered entered 8-10-20)**

Docket 451

***** VACATED *** REASON: CONTINUED TO 11-03-20 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND TRUST
BANK ADJOURNING THE HEARING ON THE OBJECTIONS TO
PROOF CLAIM NO. 88 ENTERED 9-28-20**

Tentative Ruling:

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
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Wednesday, September 30, 2020

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10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1602452403>

ZoomGov meeting number: 160 245 2403

Password: 425718

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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10:00 AM

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Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

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- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

**#1.00 Motion Debtor's Motion for Order Dismissing Its Chapter 11 Bankruptcy Case
Upon Distribution of Funds to Creditors**

Docket 152

Tentative Ruling:

Tentative for 9/30/20:

One reason that this motion drew the opposition of the UST (and discomforts the court) is that a dismissal foregoes all protections otherwise available to creditors. This alternative is offered in the interest of efficiency, but that is not the court's only consideration. The court is somewhat comforted by the fact that monies are on deposit in trust with counsel. But also, we do not have (insofar as the court could tell) a final allowance of fees. Not all shortcuts can be accommodated for efficiency. For example, the court notes that interest to creditors is ignored although required under §726(a)(5). These issues can be minimized if the motion is continued with notice to all creditors and attaching a proposed distribution ledger including an increment for interest figured at the federal rate, with a short-form fee application (mere recital of accrued fees with time sheets sufficient). Then a provisional order could be expected allowing counsel to submit a post hearing dismissal order accompanied by a declaration that all checks have been paid.

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure
George C Lazar

**United States Bankruptcy Court
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10:00 AM

8:19-11458 2045 E Highland, LLC

Chapter 11

**#2.00 STATUS CONFERENCE RE: Debtor's Disclosure Statement Describing
Chapter 11 Plan Of Reorganization
(con't from 9-9-20)**

Docket 64

Tentative Ruling:

Tentative for 9/30/20:
See #1.

Tentative for 9/9/20:
Continue so as to coincide with promised dismissal motion.

Tentative for 7/22/20:
Despite several continuance nothing new has been filed. Convert to Chapter 7.

Tentative for 5/6/20:
The court issued its tentative 2/26 pointing out various deficiencies in the disclosure statement, as drafter. Although various events have occurred in the case, such as a sale of real property, the disclosure statement has not changed. Why haven't we seen an amended disclosure statement?

No tentative.

Tentative for 2/26/20:
This is the debtor's motion to approve as adequate its revised

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Wednesday, September 30, 2020

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CONT... 2045 E Highland, LLC

Chapter 11

Disclosure Statement to accompany its First Amended Plan. The Disclosure Statement is still not adequate for at least the following reasons:

1. Sale of the real property in San Juan Capistrano, the premises for debtor's business, is promised no later than February 28, 2020. But just how this is to be accomplished without a §363(f) order is not explained and it is obvious that a plan providing for same is not yet possible. This needs better explanation and/or a more realistic timetable.
2. The plan still needs a better discussion as to how the equity interests are being treated. Presumably this belongs in Class 4 and there should be there a discussion about the absolute priority rule and the contribution of \$20,000 in new value. Further, some discussion as to how/why that is the proper number is necessary given the requirements of "market testing" found in *Bank of America NT & SA v. 203 N. La Salle Street Partnership* 526 U.S. 434 (1999) would be in order.
3. The description about discharge at 21:1-3 should be corrected in view of §1141(d)(3) as suggested by the United States Trustee.
4. As indicated in the opposition of Seacoast Commerce Bank a better job could be done explaining how this plan is feasible if, as Seacoast argues, only about \$13,000 is available on a net basis for monthly debt service after costs of operation. Normally, feasibility is a confirmation issue, but this would be the opportunity to explain in simple terms how this works.
5. Some discussion about the alleged \$150,000 loan to an insider needs to be discussed and if it is not to be pursued, why.
6. A consistent explanation as to whether Northeast Bank is truly a fully secured creditor at \$93,118 including post-petition assets is necessary,

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CONT...

2045 E Highland, LLC

Chapter 11

in order to evaluate the best interest of creditors test, as Seacoast argues.

7. Some discussion about the pending litigation against Seacoast is also necessary. Is this to be pursued post confirmation? If so, how is the litigation to be funded and what goal is sought? If a judgment were achieved what becomes of the proceeds?

Deny

Tentative for 1/8/20:

This is debtor's motion for approval of disclosure statement as required under §1125(a)(1) as containing "adequate information." An adequacy finding is opposed in oppositions filed by both the UST and Seacoast Commerce Bank. The oppositions are both well taken, and the points raised need not be restated at elaborate length here. The court is primarily concerned about the following fundamental deficiencies:

1. The plan clearly violates the absolute priority rule found at §1129(b)(2) (B)(ii). The plan proposes only 1% to unsecured creditors in installments yet the principals retain governance and stock ownership. Seacoast, which itself may be the largest unsecured creditor, plans to vote against. No new value is mentioned. So, unless something else is true this plan is patently unconfirmable, and distribution of a disclosure statement on such a plan is a waste of time and resources. While the court does not usually prejudice confirmation issues, this one is too fundamental to ignore, and so either amendment or at least explanation is required;
2. The proposed treatment of Seacoast's secured claim is also very problematic. Debtor proposes either to cramdown a payment over 30 years at 5% or a "consensual sale" of the underlying real estate

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2045 E Highland, LLC

Chapter 11

collateral. But the timing and conditions of the proposed sale are unstated, not made subject to conditions and are, thus, illusory. Can the debtor sell whenever it feels like it? Whenever in future it thinks the market has appreciated enough, even if that takes years, or never? The alternative treatment is also a non-starter. An effective 100% loan to value claim is far riskier than a more conventional loan usually made as a percentage of value. Consequently, the increased risk element must be accommodated (paid for), and anything less is a legally impermissible imposition of the risk upon the lender. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Although this is usually a confirmation issue, 5% is far too low for a commercial loan under any reasonable economic analysis, i.e. prime rate is 4.75% and must be "built up" from there even under a *Till* analysis. *North Valley Mall* is not the only analysis relied upon by courts, but this court happens to believe it is the most appropriate in a business, real estate context. Therefore, the court will not approve dissemination of disclosure upon such a patently unconfirmable plan.

3. Feasibility is very questionable. Again, normally this is judged at confirmation, but the court does not ignore that the MORS show a generally declining cash position, and this is while there has been a 9-month moratorium in debt payments. Had even reduced payments been made the debtor would be by now out of money. What, if anything, is expected to change this outlook?

Deny

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure

**United States Bankruptcy Court
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Wednesday, September 30, 2020

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10:00 AM

8:19-11575 Brent M Giddens

Chapter 11

**#3.00 STATUS CONFERENCE RE: Motion For Order Determining Value Of Collateral
(set from mtn hrg held on 7-22-20)**

Docket 92

Tentative Ruling:

Tentative for 9/30/20:

Continue to October 28 @ 10:00. Appraisals to be exchanged within seven days and briefs from both sides (with appraisals as exhibits) to be filed not later than October 13, with sur replies, if any, not later than October 23. Counsel should address whether live testimony via Zoom or possibly in person, will be required.

Tentative for 7/22/20:

Debtor acknowledges he bears the burden of proof in this valuation motion under §506. He offers only his own declaration, which, although not entirely inadmissible as an owner, suffers from several problems such as the obvious self-interest as well as reductions dependent on expertise that the declarant does not evidentially possess (i.e. structural repairs, opinion on which side of the street is more valuable and the appropriate amount of reduction, even if true, etc.). Consequently, that burden is not carried. The IRS similarly offers declarations based on hearsay reports of computerized databases such as Zillow, or upon the county assessor, which is/are a notoriously inaccurate basis of current value. Moreover, the range of values, \$900,000 to \$1.3 million is significant and where the value falls may be quite significant (strategic) in determining treatment of junior liens. Consequently, the court cannot render an informed judgment on this record. Absent an agreed single appraiser, each side will be required to submit his/its own professional appraisal of the subject property. These are to be filed at least two weeks before the hearing. Depending on range of resulting values, there may be a further requirement of an evidentiary hearing. *Continue.*

Please note: In light of concerns about COVID-19/Coronavirus and attempts

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10:00 AM

CONT... Brent M Giddens

Chapter 11

to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Brent M Giddens

Represented By
Andrew P Altholz

**United States Bankruptcy Court
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Santa Ana
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Wednesday, September 30, 2020

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5B

10:00 AM

8:19-13920 Barley Forge Brewing Company, LLC

Chapter 11

#4.00 Second And Final Fee Application Of Arent Fox LLP For Allowance Of Compensation And Reimbursement Of Expense for Period: 10/6/2019 to 9/2/2020

Arent Fox LLP, General Counsel,

Fee: \$206,612.00, Expenses: \$11,593.53.

Docket 157

Tentative Ruling:

Tentative for 9/30/20:
Allow as prayed. Appearance is optional.

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, September 30, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#5.00 First Interim Application for Compensation and Reimbursement of Expenses for Period: 1/14/2020 to 7/31/2020:

Pachulski Stang Ziehl & Jones LLP, General Bankruptcy Counsel for the Debtor and Debtor in Possession

FEE: \$878,262.25

EXPENSES: \$27,409.16

Docket 279

***** VACATED *** REASON: CONTINUED TO 10-28-20 AT 10:00 A.M. PER ORDER STIPULATION TO CONTINUE HEARINGS ON INTERIM FEE APPLICATIONS FOR ESTATE PROFESSIONALS ENTERED 9-17-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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

Wednesday, September 30, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#6.00 First Interim Application for Compensation and Reimbursement of Expenses for the Period: 1/14/2020 to 8/31/2020

Greines, Martin, Stein & Richland LLP as Appellate Counsel for the Debtor and Debtor in Possession

Fee: \$34,430.00, Expenses: \$86.75.

Docket 280

***** VACATED *** REASON: CONTINUED TO 10-28-20 AT 10:00 A.M.
PER ORDER STIPULATION TO CONTINUE HEARINGS ON INTERIM
FEE APPLICATIONS FOR ESTATE PROFESSIONALS ENTERED 9-17-
20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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

Wednesday, September 30, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#7.00 First Interim Application for Compensation and Reimbursement of Expenses
for Period: 1/14/2020 to 7/31/2020,

**GlassRatner Advisory & Capital Group, LLC as Financial Advisor for the
Debtor and Debtor in Possession**

Fee: \$197,023.00, Expenses: \$554.73.

Docket 281

***** VACATED *** REASON: CONTINUED TO 10-28-20 AT 10:00 A.M.
PER ORDER STIPULATION TO CONTINUE HEARINGS ON INTERIM
FEE APPLICATIONS FOR ESTATE PROFESSIONALS ENTERED 9-17-
20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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

Wednesday, September 30, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#8.00 First Interim Application for Compensation and Reimbursement of Expenses
for Period: 4/6/2020 to 7/31/2020, Fee: \$72,762.00

**Casso & Sparks, LLP as Special Oil & Gas Counsel for the Debtor and
Debtor in Possession**

Fee: \$72,762.00, Expenses: \$162.25.

Docket 282

***** VACATED *** REASON: CONTINUED TO 10-28-20 AT 10:00 A.M.
PER ORDER STIPULATION TO CONTINUE HEARINGS ON INTERIM
FEE APPLICATIONS FOR ESTATE PROFESSIONALS ENTERED 9-17-
20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1619820301>

ZoomGov meeting number: 161 982 0301

Password: 497820

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT...

- NONE LISTED -

Chapter

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

Thursday, October 1, 2020

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))
(cont'd from 3-26-20)

Docket 1

Tentative Ruling:

Tentative for 10/1/20:
See #7

Tentative for 3/26/20:
Status?

Tentative for 3/12/20:
So what is status? At earlier conferences there was discussion about a Rule 56 motion, but nothing appears to be on file. Continue to coincide with pre-trial conference on March 26, 2020 at 10:00AM.

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.

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

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

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

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

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, October 1, 2020

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

- #2.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of Unauthorized Post-Petition Transfer (con't from 5-27-20) (rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 10/1/20:

Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:

The court's order to mediate was not a suggestion. As the court recollects, the amount in dispute is now down to \$5800, is that right? If so, it is madness not to settle this. Since the parties seem not to be cooperating (neither side's position impresses), if a mediator is not agreed within ten days then each side to select a mediator, and those two will choose a single third person to serve as actual mediator for them from the panel. Mediation may occur remotely, but is to be completed within 90 days. The conference will be continued but if a mediation does not occur as ordered within the time allowed you may expect sanctions which could include striking of pleadings. Continue approximately 120 days.

Tentative for 2/20/20:

See #3.

Deadline for completing discovery: May 1, 2020

Last date for filing pre-trial motions: May 25, 2020

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

Pre-trial conference on:
Joint pre-trial order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by Plaintiff within
10 days. One day of mediation to be completed by May 1, 2020.

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
Michael Simon
Kyra E Andrassy

Defendant(s):

WELLS FARGO BANK,

Pro Se

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

Thursday, October 1, 2020

Hearing Room 5B

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, October 1, 2020

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01023 Avery v. Shen Liu

**#3.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of
Unauthorized Post-Petition Transfer
(con't from 5-27-20)
(rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 10/1/20:
Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:
Same as #11.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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
Laila Masud
D Edward Hays

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

Thursday, October 1, 2020

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 5-27-20)
(rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 10/1/20:
Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:
Same as #11 and 12.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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:

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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):

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, October 1, 2020

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

**#5.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers
(con't from 5-27-20)
(rescheduled from 5-28-2020 at 10:00 a.m. per court)**

Docket 1

Tentative Ruling:

Tentative for 10/1/20:
Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:
Same as #11, 12, 14.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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:

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

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

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

8:19-10814 M3Live Bar & Grill, Inc.

Chapter 7

Adv#: 8:20-01108 Karen Sue Naylor v. Wosoughkia et al

#6.00 STATUS CONFERENCE RE:..Complaint For: 1. Mandatory Subordination of Claim Pursuant to 11 U.S.C. Section 510(b); and, 2. Transfer of Judgment Lien to the Estate Nature of Suit: (81 (Subordination of claim or interest))

Docket 1

Tentative Ruling:

Tentative for 10/1/20:
Discovery cutoff Dec. 31, 2020. Last date for pretrial motions January 29, 2021. Pretrial conference February 11, 2021.

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad

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

Thursday, October 1, 2020

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

#7.00 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 3-26-20)

Docket 0

Tentative Ruling:

Tentative for 10/1/20:
Why no status report?

Tentative for 3/26/20:
Status?

Tentative for 11/14/19:
See #5

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.

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

Thursday, October 1, 2020

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

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, October 1, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#8.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Based On Fraud And Objecting To Discharge Of Debtors (cont'd from 7-30-20 per order re: stip. to cont. pre-trial entered 6-08-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER RE: STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE HEARING ENTERED 9-04-20**

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.

Tentative for 6/6/19:
See # 23 & 24 - Motions to Dismiss

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

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

Thursday, October 1, 2020

Hearing Room

5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

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, October 1, 2020

Hearing Room 5B

10:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

- #9.00 PRE-TRIAL CONFERENCE RE: Complaint For Declaratory Relief Regarding Property Of The Estate Pursuant To 11 USC § 541 (set from s/c hrg held on 12-5-19) (rescheduled from 5-7-2020 at 10:00 a.m.) (cont'd from 7-2-20 per order approving stip. to amend certain dates in modified scheduling order entered 6-04-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO EXTEND DATES IN MODIFIED SCHEDULING ORDER ENTERED 9-04-20**

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

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

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

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

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**

Thursday, October 1, 2020

Hearing Room 5B

10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw

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

Thursday, October 1, 2020

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01079 Remares Global, LLC, a Florida limited liability c v. Shabanets et al

#10.00 Motion To Set Aside Entry Of Default Of Olga Shabanets, As Trustee Of The 2012 Irrevocable Trust Agreement of Igor Shabanets Dated November 12, 2012; Olga Shabanets, an individual, To Complaint

Docket 31

Tentative Ruling:

Tentative for 10/1/20:

Plaintiff served a copy of the summons and complaint on Defendants on May 15, 2020, with an answer due by June 8, 2020. On July 15, 2020, Plaintiff sought entry of default against Defendants. Entry of default was made on July 15 and 16, 2020. This motion was filed on August 31, 2020.

Defendants' main argument is that the failure to respond to the summons and complaint was due to being served at the wrong address. Specifically, Defendants assert that Plaintiff mailed a copy of the Summons and Complaint to Defendants on May 15, 2020 to the address 2 Monarch Cove, Dana Point, CA 92692-4246. Olga asserts that she has not resided at 2 Monarch Cove, Dana Point, CA 92692 ("2 Monarch") since August 8, 2019. Therefore, she never received timely notice or service of the summons and complaint. She also asserts that she has meritorious defenses to the causes of action brought against her. Defendants attached an answer to the complaint as "Exhibit A" to this motion, but the Answer does not appear to have been separately filed.

On the surface, this seems to be "good cause." However, Plaintiff points out that Defendants' assertions are directly contradicted by filed pleadings and Olga's own statements. For example, Plaintiff asserts that on August 27, 2019, Olga was served at 2 Monarch with the summons and complaint in a different matter of *Remares Global, LLC v. Olga Shabanets et al*, Orange County Superior Court case No. 30-2019-01092348-CU ("State Action"). Plaintiff asserts that Olga never contested service and on February 11, 2020 filed her answer to the complaint. Attached as Exhibits "1" and "2" to the Request for Judicial Notice ("RJN") are copies of the proof of service and

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CONT... **Igor Shabanets**

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Olga's answer. If Olga had not been residing at 2 Monarch after August 9, 2019, Plaintiff argues, she would not have received notice of the State Action and would not have filed an answer to the complaint. Also, Plaintiff asserts, at Olga's October 16, 2019 judgment debtor examination in a federal case, Olga stated she was living at 2 Monarch. See Exhibit "E" ("the transcripts") to the Forsley Decl. pg. 7, Ins. 14-15. When asked who else was living with her at 2 Monarch Olga said, "my mother and my child, my daughter." Olga was also asked "[a]t this time, does Igor Shabanets live at the Monarch Cove address," and she stated "no." "Igor Shabanets lives in jail right now." See Exhibit "E" to the Forsley Decl. pg. 9. Thus, at Olga's October 16, 2019 examination, Olga admitted she lives at 2 Monarch, and this statement seems to directly contradict Olga's declaration that she vacated 2 Monarch on August 8, 2019.

Similarly, Plaintiff asserts, on January 21, 2020 Igor Shabanets ("Debtor") filed a status report in his main bankruptcy case wherein he stated "Debtor resides with his family in the Dana Point, CA property[.]" Attached as Exhibit "3" to the RJN is a copy of the status report. This would seem to confirm, yet again, that Olga, Debtor, and their family lived together at 2 Monarch after August 2019 (*i.e.*, after Debtor was released from jail) and again casts much doubt Olga's claim that she vacated 2 Monarch on August 8, 2019.

Defendants have not filed a reply. On the record before the court, Defendants have not put forth evidence beyond Olga's declaration that she resides or resided at a place other than 2 Monarch when service of the complaint and summons was executed. Furthermore, Olga's declaration is undermined by the evidence put forth by Plaintiff, which seems to establish that she did and likely continues to reside at 2 Monarch.

Defendants consequently fail their burden of proof to show any of the elements of Rule 60(b).

Deny.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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Defendant(s):

Igor Shabanets	Pro Se
Olga Shabanets	Represented By Bruce A Boice
Olga Shabanets, as trustee of the	Represented By Bruce A Boice
Richard A Marshack	Represented By D Edward Hays

Plaintiff(s):

Remares Global, LLC, a Florida	Represented By Alan W Forsley
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Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays
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8:20-10295 Katangian Vail Avenue Property Investments, LLC a

Chapter 11

#11.00 Motion for an Order Requiring Immediate Surrender of Property, an OSC RE Contempt, and Related Relief
(OST signed 9-9-2020)
(cont'd from 9-24-20)

Docket 62

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION RESOLVING MOTION FOR AN ORDER REQUIRING
IMMEDIATE SURRENDER OF PROPERTY, AN OSC RE: CONTEMPT
AND RELATED RELIEF ENTERED 9-29-20**

Tentative Ruling:

Tentative for 9/24/20:
Status?

Tentative for 9/17/20:
No tentative. Is this really a bankruptcy issue?

Party Information

Debtor(s):

Katangian Vail Avenue Property

Represented By
Michael R Totaro

Movant(s):

Razmer #3, LLC

Represented By
Johnny White

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11:00 AM

8:20-11154 1141 South Taylor Avenue, LLC

Chapter 11

#12.00 Motion for an Order Requiring Immediate Surrender of Property, an OSC RE Contempt, and Related Relief
(OST signed 9-9-2020)
(cont'd from 9-24-20)

Docket 37

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION RESOLVING MOTION FOR AN ORDER REQUIRING IMMEDIATE SURRENDER OF PROPERTY, AN OSC RE CONTEMPT AND RELATED RELIEF ENTERED 9-29-20**

Tentative Ruling:

Tentative for 9/24/20:
See #12.

Tentative for 9/17/20:
See #1.

Party Information

Debtor(s):

1141 South Taylor Avenue, LLC

Represented By
Michael R Totaro

Movant(s):

Razmer #3, LLC

Represented By
Johnny White

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

Chapter 7

Adv#: 8:18-01108 Naylor v. Miller

#13.00 Defendants Motion For Summary Judgment

Docket 48

Tentative Ruling:

Tentative for 10/1/20:

This is Defendant, Dale S. Miller ("Miller's") Rule 56 motion for summary judgment sought against Plaintiff, Karen Sue Naylor ("Trustee"), the chapter 7 trustee for the estate of debtor, Anna's Linens, Inc. ("Debtor"). Trustee opposes the motion. As a matter of law, Miller argues, Trustee simply cannot establish that Miller received an insider preference ten months before the Debtor's bankruptcy petition. The alleged preference – a retirement benefit under a then-6-year-old deferred compensation plan – was remitted to Miller a month after he resigned from Debtor's board.

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

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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. Known Undisputed Facts

As far as the court can tell, the following facts are undisputed:

In January 2008, Debtor created the Anna's Linens Deferred Compensation Plan (the "Plan") which was amended and restated on December 1, 2008, (the "Amended Plan"). The purpose of the Amended Plan was "to provide specified benefits to Directors and a select group of

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management or highly compensated Employees who contribute materially to the continued growth, development and future business success of Anna's Linens, Inc., a Delaware corporation, and its subsidiaries, if any, that sponsor this Plan." The Amended Plan provides, in pertinent part:

1.31 "Retirement" ...shall mean with respect to a Participant who is a Director, a Separation from Service.

...

1.32 "Separation from Service" shall mean a termination of services provided by a Participant to his or her Employer, whether voluntarily or involuntarily, other than by reason of death or Disability as determined by the Committee in accordance with Treas. Reg. §1.409A-1h.

...

5.1 Retirement Benefit. If a Participant experiences a Separation from Service that qualifies as a Retirement, the Participant shall be eligible to receive his or her vested Account Balance in either a lump sum or annual or quarterly installment payments, as elected by the Participant in accordance with Section 5.2 (the "Retirement Benefit"). A Participant's Retirement Benefit shall be calculated as of the close of business on or around the applicable Benefit Distribution Date for such benefit, which shall be the date on which the Participant experiences a Separation from Service...

5.2 Payment of Retirement Benefit. ...(c) the lump sum payment shall be made, or installment payments shall commence, no later than 60 days after the Participant's Benefit Distribution Date.

On March 2, 2010, the Debtor entered into a Master Trust Agreement for Deferred Compensation Plan (the "Master Trust Agreement"). The Master Trust Agreement evidenced the establishment of a master trust (the "Trust") to hold and administer the assets of the Trust for the benefit of the

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Participants. Pursuant to the terms of the Amended Plan and Master Trust Agreement, the Debtor, among others, could authorize the transfer of funds or other assets from the Amended Plan to the Trust for the benefit of the Participants. Miller was a director of the Debtor for approximately 25 years until July 17, 2014, but as explained below, there may be reasons to not ascribe that pinpoint date undue significance. Miller was also a lawyer affiliated with the Theodora Oringer firm, that provided legal services to Debtor. Miller alleges that he stopped providing legal services for the Debtor well-before his tenure on the board of directors concluded and was never an employee of the Debtor. Miller was allegedly not responsible for the creation, implementation or establishment of the Plan or the Amended Plan, or the Trust.

As part of an equity transaction with Salus Capital Partners, LLC, which closed on July 18, 2014 (the "Transaction"), the Debtor's new control group appointed a new board of directors. Invitations to join the new board were extended in advance of the Transaction. Miller was not invited to join the new board. Immediately upon closing, the new board was constituted. On July 18, 2014, Miller sent a formal resignation letter dated July 17, 2014. (see Dkt. # 61, Decl. of Chris Minier, Ex. 20).

Upon the closing of the Transaction, and the end of his tenure as a board member, Miller was entitled to his "Retirement Benefit" under the Amended Plan which provides that a retirement distribution must be made with 60 days after a separation from service. On or about August 18, 2014, Miller received a distribution in the amount \$134,276.71 from the Trust (the 'Transfer') on account of his Retirement Benefit. On June 14, 2015 ("Petition Date"), the Debtor filed for bankruptcy protection under chapter 11 of the United States Code (the "Bankruptcy Code"). Consequently, Miller's resignation and receipt of the transfer all occurred within the year preference period. On March 30, 2016, the bankruptcy case was converted to chapter 7. On June 13, 2018, Trustee commenced this adversary proceeding against

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Miller under §§547 and 550 to recover the Transfer.

3. The Record Is Likely Incomplete

The motion and opposition present different characterizations of the same story. The motion, as might be expected, presents a version with relatively straightforward facts, which, taken as true, could lead to an obvious conclusion. The problem is that as this is a motion for summary judgment, the court is obliged to view the facts in the light most favorable to Trustee as the nonmoving party. Trustee argues that complex issues of both law and fact remain, and therefore, the motion should not be decided without a clear record. Specifically, Trustee has raised questions about Miller's association with the law firm Theodora Oringher, which provided legal services to Debtor. Miller, as an affiliate of that firm, asserts that he stopped providing legal services to Debtor well-before the conclusion of his tenure on Debtor's board, but Trustee argues that there is ample evidence that the firm continued to provide legal services to Debtor. So, the Movant's affiliation with the law firm within the preference period, and how that affiliation might affect his standing as an "insider" of Debtor, remains murky. Trustee's ongoing discovery efforts are aimed, at least in part, at finding out what, if any, relationship Miller continued to have with Debtor through his law firm after his resignation from Debtor's board. Trustee will also be inquiring about the scope of the law firm's legal representation of Debtor during the time of the Salus refinancing transaction and creation of the deferred compensation plan.

To that end, Trustee asserts that there will likely be a need to engage expert witnesses, and generally more detailed discovery than initially anticipated because of the sheer volume of documents in Trustee's possession. Trustee is also engaged in several other deferred compensation adversary proceedings in this bankruptcy case, and Trustee requires time to resolve the various discovery disputes and sort through the relative mountain of information. The current discovery completion date in the deferred

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compensation adversaries is November 4, 2020, but Trustee expects that an extension will be required. Regarding this motion, Trustee asserts that Miller has still not completed his responses to the Trustee's discovery requests (at the time the motion was filed). Due to this delay, Trustee asserts that no depositions have yet been taken. The ongoing pandemic has likely contributed to the delay in getting depositions scheduled and taken. Miller argues that Trustee has already had ample time and opportunity to complete its discovery given the age of the case, and so this motion should be decided before discovery is closed. However, Trustee reports that the parties plan to attend mediation beginning in October as details are currently being finalized.

The court is wary of attempting to adjudicate a motion for summary judgment when there is the possibility that the motion might be premature. The court understands that this adversary proceeding is already over two years old, but the court also understands that granting this motion based on an incomplete record will likely draw an appeal, causing yet more delays. Besides, the court is aware that a mediation is scheduled for the very near future, which if successful, would resolve some or all the issues in this adversary proceeding. But still, Movant is entitled to a ruling on what he has put forward to evaluate whether he is entitled to a decision in his favor as a matter of law.

4. Was Miller an Insider for Purpose of a Preferential Transfer?

11 U.S.C. §547(b)(4)(B) provides:

"(b)Except as provided in subsections (c) and (i) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—(4) made—...(B)between ninety days and one year before the date of the filing of the petition, if

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such creditor at the time of such transfer was an insider[.]"

The court has encountered this issue before in this adversary proceeding, albeit in the context of a Rule 12(c) motion for judgment on the pleadings. There is significant similarity between the arguments advanced in this motion and the unsuccessful motion for judgment on the pleadings. Nearly two years ago this court addressed the crucial question in its November 8, 2018 adopted tentative ruling, as follows:

"Additionally, the parties argue at length over the fascinating question of whether the transfer was 'arranged' while Defendant was an insider and that should inform on the question of when the 'transfer' occurred for preference analysis. See e.g. *In re EECO, Inc.*, 138 B.R. 260, 263 (Bankr. C.D. Cal. 1992). The Trustee argues persuasively that clearly Defendant was an insider when the debtor's Deferred Compensation scheme was created in 2010, the date of resignation may be part of an expansive definition of what is meant by 'arranged' and it is illogical (almost laughable) to believe that Defendant could defeat this status by simply resigning only a few days or weeks before actually receiving the funds.

While the court could delve into the split of authority on this question, it really does not need to. That is for the simple reason that the preamble to §101(31) provides:

'The term 'insider' *includes*—

- (B) if the debtor is a corporation- [i.e. director of the debtor]
- (ii) officer of the debtor....' (italics added)

This language has been interpreted as illustrative, not exclusive, and requires a factual inquiry and determination where the policy and

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logic of the Code require that certain persons be treated as insiders although not strictly within the enumerated categories of §101(31). See e.g. *Shubert v. Lucent Technologies, Inc. (In re Winstar Communications, Inc.)*, 554 F. 3d 382, 394-96 (3d Cir. 2009); *In re O'Neill*, 550 B.R.482, 516 (Dist. N.D. 2016); *Damir v. Trans-Pacific National Bank (In re Kong)*, 196 B.R. 167, 171 (N.D. Cal. 1996); *In re Orsa Associates*, 99 B.R. 609, 621 (Bankr. E.D.Pa. 1989); *In re Babcock Dairy*, 70 B.R. 657, 660 (Bankr. N.D. Ohio 1986). So, whether Defendant might be an 'insider' as alleged does not depend wholly on his status as an officer [or director], even if that date could be pinpointed for purposes of a Rule 12(c) motion without resort to facts outside the pleadings." See Order Denying Motion for Judgment on The Pleadings, Dkt. #26, Ex. 1. (italics added)

Stated another way, just because a director may have resigned a few days before receiving his check [or in this case a month or so] does not settle the issue, as the "includes" language makes clear that formal status as officer or director at the precise moment of receipt is not determinative, nor logically should it be. The Code seeks to probe situations where despite formal status on moment of transfer there might be reasons to look behind labels into the reality of situations. A rigid rule could obviously be exploited by any insider who resigns minutes before receiving the funds. That would make a mockery of the law. The court recognizes that Miller argues he was effectively out of the decisional loop as early as mid-July 2014 when the new board was installed, or even before. But, given that date, even if the court were to adopt rigid approaches, it cannot be gainsaid that Miller was indeed a statutory insider within the year in which the transfer occurred, and so the only question is whether the intervening month or so should make a difference. Certainly, ten seconds should not logically be enough. How about two hours? A week? A month? If a month is materially different, why? It is undisputed that the mechanism was set up before, when Miller was an insider.

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As one might expect, Miller has bolstered his latest motion with more authority, much of from outside the 9th Circuit, though he largely leaves his main authority intact. In any case, as set forth in the opposition, many of the cases cited by Miller are sufficiently distinguishable as to limit their value. For example, Miller cites *Butler v. David Shaw, Inc.*, 72 F.3d 437, 441-42 (4th Cir. 1996), where the court held that the relevant question is whether the creditor "was an insider at the time of the challenged transfers" and noting that Plaintiff's argument otherwise "rests upon a strained interpretation of the term 'transfer[.]'" Trustee points out that in *Butler*, the Fourth Circuit rejected an argument that a series of related transactions constituted one transaction for purposes of determining insider status. *Butler* at 441-42. The *Butler* court reasoned that a transfer by check (which was the challenged transaction in *Butler*) is not an ongoing process but is only executed on the date the issuing bank honors the check. *Id.* at 442. That seems to be a different situation than is present here where the mechanism for the transfer was put in place **while Miller was an insider**. Miller argues that by resigning, he ceased instantly to be an insider, and because the funds were not transferred immediately before or immediately after his resignation, he could not have been an "insider" within the meaning of the statute. Miller is arguing for a rigid rule standing for the proposition that for purposes of determining insider status, the *only* relevant date is when the funds were transferred (*i.e.* when the money officially changed accounts). This rigidity, Miller argues, would be in keeping with the Supreme Court's preference for bright-line rules. But again, this is merely persuasive authority as Miller has not cited caselaw from this circuit that supports such a cut and dry interpretation. Furthermore, the preference for bright-line rules expressed by the Supreme Court in *Barnhill v. Johnson*, 503 U.S. 393, 399 (1992) was given in the context of determining when payment by check effectively constituted a transfer, but that's a mechanical, banking issue, not what confronts the court here. It would seem that a more wholistic approach is both warranted and desirable on the facts presented here. As noted above, this court has, for policy reasons, made known its skepticism that this case warrants such rigidity as the potential for abuse and

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circumvention of the bankruptcy system seems obvious.

Still, even if Miller's interpretation of the law were correct, the court has doubts that the facts, as alleged here, are as definitive and comprehensive as argued. For example, one of the cases Miller cites from this circuit is *Damir v. Trans-Pacific National Bank (In re Kong)*, 196 B.R. 167, 171 (N.D. Cal. 1996), where the court explained that, in determining whether a creditor is also an insider:

"[w]hat the courts have examined under the facts of each case has been the nature of the relationship between the debtor and the creditor, and whether that relationship, defined in terms of control or undue influence, gave the creditor the power to have its debts repaid. But the cases agree that the relationship and power must be more than the debtor-creditor relationship itself."

As noted above, this is precisely what Trustee states she intends to investigate through discovery. It is understandable that Miller would prefer summary judgment be granted at this point because his sworn declaration assures the court that there was no such relationship. But it would be singularly inequitable to cut Trustee off at the knees by simply accepting Miller's declaration as the definitive authority on the subject, especially given Miller's obvious self-interest. It may very well come to pass that Trustee is unable to unearth any facts that would cast doubt on Miller's declaration, and if that were to occur, Miller's declaration might be persuasive. But to end the inquiry before the completion of the court-sanctioned discovery period would likely provide good justification for an appeal. To put it another way, viewing the facts of the case, including the procedural posture, in the light most favorable to Trustee as the nonmoving party, the scale tips toward denying the motion.

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Miller cites caselaw that could be interpreted to favor his position, but few if any of the cases are from this circuit, making it far from a "slam dunk." Moreover, this court is very skeptical of such a "brightline rule" in any event. As discovery is still ongoing (proceeding at a glacial pace for various reasons), it remains conceivable that Trustee could yet discover evidence that bolsters her position against Miller. Uncertainty over completeness of the factual record, on top of the dubious nature of a brightline rule, makes the court uncomfortable in a Rule 56 context. Discovery is set to close, as of now, in a little over a month's time, though that might be extended. The parties are also scheduled to attend mediation in the coming weeks, which if productive, could resolve this case without further expenditure of time and expense. Thus, for these reasons, the motion will be ...

Denied

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):

Dale Miller

Represented By
Jonathan Seligmann Shenson
Lauren N Gans

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Plaintiff(s):

Karen Sue Naylor

Represented By
Todd C. Ringstad
Brian R Nelson
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
Richard C Donahoo
Andrew Still

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8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#14.00 Motion For Possible Incarceration
(set from order of release entered 4-24-20)
(cont'd from 7-30-20)

Docket 0

*** VACATED *** REASON: CONTINUED TO 11-10-20 AT 11:00 A.M.
PER RULING ON 9-01-20

Tentative Ruling:

Tentative for 7/30/20:
No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein
Tracy Casadio

Trustee(s):

Thomas H Casey (TR)

Represented By

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Thomas H Casey
Ronald N Richards

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#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1604713827>

ZoomGov meeting number: 160 471 3827

Password: 150266

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

- NONE LISTED -

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

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

8:15-15694 David Francis Theriot and Donna June Gibbs

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 9-22-20)

**BALBOA THRIFT & LOAN
Vs.
DEBTOR**

Docket 51

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY - SETTLED BY
STIPULATION ENTERED 10-05-20**

Tentative Ruling:

Tentative for 9/22/20:
Grant absent current status post-petition or stipulated APO.

Party Information

Debtor(s):

David Francis Theriot

Represented By
Joseph A Weber

Joint Debtor(s):

Donna June Gibbs

Represented By
Joseph A Weber

Movant(s):

Balboa Thrift & Loan

Represented By
Keith E Herron

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, October 6, 2020

Hearing Room 5B

10:30 AM

8:15-15694 David Francis Theriot and Donna June Gibbs

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**NATIONSTAR MORTGAGE LLC
Vs.
DEBTORS**

Docket 54

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOVANT'S MOTION FOR RELIEF FROM
AUTOMATIC STAY FILED 9/29/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Francis Theriot

Represented By
Joseph A Weber

Joint Debtor(s):

Donna June Gibbs

Represented By
Joseph A Weber

Movant(s):

Nationstar Mortgage LLC

Represented By
Kristin A Zilberstein
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 6, 2020

Hearing Room 5B

10:30 AM

8:20-12426 Lorena G Umadhay

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

MECHANICS BANK

Vs

DEBTOR; AND RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 7

Tentative Ruling:

Tentative for 10/6/20:
Grant.

Party Information

Debtor(s):

Lorena G Umadhay

Represented By
Onyinye N Anyama

Movant(s):

MECHANICS BANK

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, October 6, 2020

Hearing Room 5B

10:30 AM

8:16-13256 Ann Marie Rees

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 9-8-20)

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 44

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
STAY ENTERED 9-15-20**

Tentative Ruling:

Tentative for 9/8/20:
Grant absent APO.

Tentative for 7/28/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Ann Marie Rees

Represented By
Barbara J Craig

Movant(s):

Wells Fargo Bank

Represented By
April Harriott
Matthew R. Clark III
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, October 6, 2020

Hearing Room 5B

10:30 AM

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

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 9-8-2020)**

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTORS**

Docket 60

Tentative Ruling:

Tentative for 10/6/20:
Status?

Tentative for 9/8/20:
Post confirmation defaults are not tolerated, but the court cannot determine
that question on this record. Grant absent APO.

Party Information

Debtor(s):

Froilan Namin Cabarles

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Liza Fajardo Cabarles

Represented By
Hasmik Jasmine Papian

Movant(s):

Deutsche Bank National Trust

Represented By
Austin P Nagel

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

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

CONT... Froilan Namin Cabarles and Liza Fajardo Cabarles

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, October 6, 2020

Hearing Room 5B

10:30 AM

8:19-10423 Emma Guillen

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

**BAYVIEW LOAN SERVICING, LLC
Vs.
DEBTOR**

Docket 48

Tentative Ruling:

Tentative for 10/6/20:
Grant.

Party Information

Debtor(s):

Emma Guillen

Represented By
Tom A Moore

Movant(s):

Bayview Loan Servicing, LLC, and

Represented By
Christina J Khil

Trustee(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 6, 2020

Hearing Room 5B

10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

**#7.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 9-22-20 per order upon stip to cont. hrg entered 9-21-20)**

**SECURED CREDITOR POPPY BANK
Vs.
DEBTORS**

Docket 32

Tentative Ruling:

Tentative for 10/6/20:
Grant absent APO.

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Movant(s):

Poppy Bank

Represented By
Mitchell B Greenberg

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

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

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

8:20-12030 Eduardo Horta

Chapter 7

#8.00 Motion for relief from the automatic stay REAL PROPERTY

**LAGUNA VILLAGE OWNERS' ASSOCIATION, INC
Vs
DEBTOR**

Docket 17

Tentative Ruling:

Tentative for 10/6/20:

No proof of separate service upon debtor. Continue.

Party Information

Debtor(s):

Eduardo Horta

Represented By
Timothy McFarlin

Movant(s):

Laguna Village Owners' Association,

Represented By
Brandon J Iskander

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

8:20-12030 Eduardo Horta

Chapter 7

**#8.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 9-29-20)**

**CREDIT UNION OF SOUTHERN CALIFORNIA
Vs.
DEBTOR**

Docket 13

Tentative Ruling:

Tentative for 10/6/20:
Grant.

Tentative for 9/29/20:
Continue to October 6 @ 10:30 a.m. to coincide with HOA motion.
Appearance is optional.

Party Information

Debtor(s):

Eduardo Horta

Represented By
Timothy McFarlin

Movant(s):

Credit Union of Southern California

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

8:19-12279 Maria Mercedes Ibarra de Acosta

Chapter 13

**#9.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 9-22-20)**

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 34

Tentative Ruling:

Tentative for 10/6/20:
Grant if consistent with plan modification and absent any opposition by
Trustee.

Tentative for 9/22/20:
Grant absent current post petition status or APO.

Appearance is optional.

Tentative for 8/11/20:
Grant absent status of current post confirmation or stipulation to APO.

Appearance is optional.

Party Information

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

Tuesday, October 6, 2020

Hearing Room 5B

10:30 AM

CONT... Maria Mercedes Ibarra de Acosta

Chapter 13

Debtor(s):

Maria Mercedes Ibarra de Acosta

Represented By
Benjamin R Heston

Movant(s):

WELLS FARGO 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, October 6, 2020

Hearing Room 5B

11:00 AM

8:09-22699 Cheri Fu and Thomas Fu (Deceased)

Chapter 7

#10.00 Trustee's Motion for Order Approving Compromise of Refund of Income Taxes Claim

Docket 861

Tentative Ruling:

Tentative for 10/6/20:
Grant.

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Lisa Nelson
James Andrew Hinds Jr

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

Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1617522870>

ZoomGov meeting number: 161 752 2870

Password: 918327

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

8:20-12476 EDC, LLC

Chapter 11

#1.00 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

Tentative Ruling:

Tentative for 10/7/20:

Continue to coincide with UST motion to dismiss set for Oct. 14 @ 10:00 a.m.

Appearance is optional.

Party Information

Debtor(s):

EDC, LLC

Represented By
Jay W Smith

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

Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

8:19-11525 Christopher John Windisch and Mimoza Windisch

Chapter 11

**#2.00 POST-CONFIRMATION STATUS CONFERENCE Re: Chapter 11 Plan
(set from confirmation hrg held on 12-18-19)
(cont'd from 4-29-20)**

Docket 46

Tentative Ruling:

Tentative for 10/7/20:

Still awaiting order on motion to administratively close case on motion filed 9/15.

Tentative for 4/29/20:

Does a further status conference in, say, 4 months make sense? Will the reorganized debtor seek to administratively close the case in meantime?

Tentative for 12/18/19:

Confirm. Set status conference post confirmation.

Tentative for 10/23/19:

Approve. Set deadlines and confirmation hearing.

Party Information

Debtor(s):

Christopher John Windisch

Represented By
Michael Jones
Sara Tidd

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

**CONT... Christopher John Windisch and Mimoza Windisch
Joint Debtor(s):**

Chapter 11

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 7, 2020

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#3.00 Plan Confirmation Hearing Re:Plan Of Reorganization

Docket 342

***** VACATED *** REASON: CONTINUED TO 12-02-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
HEARING ON CONFIRMATION OF DEBTOR'S CHAPTER 11 PLAN
ENTERED 9-18-20**

Tentative Ruling:

Tentative for 6/24/20:

The U.S. Trustee's objection was not timely, but Debtor still responded. So, the court will assume away the procedural issues. In response to the UST's objection: Debtor filed an amended plan (mistakenly entered as an amended disclosure statement) on June 16. Debtor also filed a separate response directly addressing the concerns identified in the UST's objection. This response includes additional proposed language that, if ultimately adopted into the plan, would likely address the UST's comments. As of this writing on (6/24), the UST has not filed anything further. No other interested party has filed a response of any kind to the DS.

The DS itself is not particularly user friendly as it does not have a table of contents, nor any accompanying brief to make the document easily navigable. Furthermore, while most of the required disclosures can be found in some form in the DS, it seems to be missing background information such as Debtor's financial history and events leading up to filing the petition. The DS has several exhibits: but the exhibits lack explanations of what they are and how they fit into the proposed plan of reorganization.

Debtor states that all disputes have been resolved, aside from the IRS and Citizens Bank Claims, which the newly added language in the proposed plan purports to address. Debtor states that the plan will pay 100% of the allowed creditor claims. When the UST commented on the DS, the court very likely would have found the DS to have inadequate information. The proposed additional language would, if ultimately adopted, likely satisfy the UST's concerns, and the court's.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Although the DS could benefit from additional background information about Debtor's case: it may not be necessary. However, the new proposed language should be integrated into the DS. In sum: Debtor's DS is not an easy document to navigate and has some technical Deficiencies, but likely nothing fatal. The UST's objection has been addressed, though the UST may not have had an opportunity to review the proposed changes. No other party in interest has objected or opposed the DS. If the UST does not comment further before the hearing, the DS can likely be approved.

Conditionally approve.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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
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Wednesday, October 7, 2020

Hearing Room

5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

- #4.00** 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 9-24-20 per scheduling order entered 7-06-20)

Docket 1

***** VACATED *** REASON: ORDER CONTINUING STATUS
CONFERENCE ON STATUS OF ADVERSARY PROCEEDING FROM
OCTOBER 7, 2020 UNTIL DECEMBER 2, 2020 AT 10:00 A.M. ENTERED
10/6/2020**

Tentative Ruling:

Tentative for 6/24/20:

Would the parties prefer this be set for pretrial conference now, or continued as a status conference allowing a second attempt at mediation?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, October 7, 2020

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Tentative for 2/26/20:
Status? Would ordered mediation help?

Tentative for 12/11/19:
Further status report is needed. For example, IRS is still a defendant.

Tentative for 9/11/19:
Off calendar? See #9

Tentative for 9/4/19:
Does #7 resolve this?

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
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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.

Party Information

Debtor(s):

Ron S Arad

Represented By
William H Brownstein

Defendant(s):

DEPARTMENT OF THE
UNITED STATES OF AMERICA

Pro Se
Represented By
Jolene Tanner

Plaintiff(s):

Ron S Arad

Pro Se

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

Thursday, October 8, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1604527780>

ZoomGov meeting number: 160 452 7780

Password: 915956

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 8, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, October 8, 2020

Hearing Room 5B

10:00 AM

CONT...

- NONE LISTED -

Chapter

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

Thursday, October 8, 2020

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

- #1.00** 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 7-23-20)

Docket 1

Tentative Ruling:

Tentative for 10/8/20:
Status on answers/defaults?

Tentative for 7/23/20:
Status?

Tentative for 3/5/20:
What is status of answer/default?

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

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

Thursday, October 8, 2020

Hearing Room 5B

10:00 AM

CONT... Zia Shlaimoun Chapter 7

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
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
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Thursday, October 8, 2020

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01088 Marshack v. Interstate Oil Company

**#2.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims
(cont'd from 8-06-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-29-20 AT 10:00 A.M. -
ANOTHER SUMMONS ISSUED 8-13-20**

Tentative Ruling:

Tentative for 8/6/20:
What is status of answer? Continue?

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Interstate Oil Company

Pro Se

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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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 8-06-20 per order approving joint stip. to cont. entered 8-04-20)**

Docket 12

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION FOR ENTRY OF JUDGMENT AND SETTLEMENT
AGREEMENT RE: ADVERSARY COMPLAINT ENTERED 10-01-20**

Tentative Ruling:

Tentative for 2/27/20:

Where is the joint pre-trial stipulation? What is status? Should case be dismissed for failure to prosecute?

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.

Party Information

Debtor(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Defendant(s):

U.S. Department of Education

Pro Se

Wells Fargo Education Financial

Pro Se

Nel Net Loan Services

Pro Se

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Plaintiff(s):

Hutton Douglas Michael Brown

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

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Hearing Room 5B

10:00 AM

8:12-17406 Matthew Charles Crowley

Chapter 7

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

#4.00 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8) (cont'd from 9-03-20 per order on stip. to continue pre-trial conf. entered 8-17-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-12-20 AT 10:00 A.M.
PER ORDER ON PRE-TRIAL CONFERENCE ENTERED 9-22-20**

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

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10:00 AM

8:19-11359 Ronald E. Ready

Chapter 7

Adv#: 8:19-01154 Paramount Residential Mortgage Group Inc v. Ready

#5.00 PRE-TRIAL 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) (con't from 8-6-2020 at 10:00 a.m. per order appr. stip. to con't ent. 6-18-2020)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M. PER ORDER APPROVING THE STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE AND DISCOVERY CUTOFF AND MOTION CUTOFF DATE ENTERED 10-07-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald E. Ready

Represented By
Joseph A Weber
Fritz J Firman

Defendant(s):

Ronald E Ready

Represented By
Fritz J Firman

Plaintiff(s):

Paramount Residential Mortgage

Represented By
Shawn N Guy

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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11:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:19-01131 Estate of William L. Seay et al v. Thomas H. Casey

#6.00 Motion To Dismiss Second Amended Adversary Complaint

Docket 67

Tentative Ruling:

Tentative for 10/8/20:

Defendant Thomas H. Casey ("Trustee" or "Defendant"), chapter 7 trustee for the estate of debtor, Robert Ferrante ("Debtor"), brings this motion to dismiss the Second Amended Complaint ("SAC") filed by the Estate of William L. Seay ("Seay" or "Plaintiff") pursuant to Fed. R. Civ. P. 12(b)(6). Seay opposes the motion.

1. FRCP 12(b)(6) 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.*

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"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556, 127 S. Ct. 1955, 1964-65 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (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.* Threadbare recital of elements supported by conclusory statements is not sufficient. *Id.*

2. Brief Background

The following is a condensed summary of the relevant factual and procedural background. On May 4, 2004, Col. Seay obtained a judgment against Debtor in the principal amount of \$2,471,057.16 ("Judgment"). The Judgment was perfected against real property assets of the Debtor in Orange County by the recording of an abstract of judgment with the Orange County Recorder's Office on May 20, 2004 ("Seay Lien"). The Judgment was unanimously affirmed in the Second District Court of Appeal in 2005. Under California law, the Seay Lien attached to all real property interests of the Debtor in Orange County whether existing on the date of recordation or acquired in the future, whether legal or equitable, fixed or contingent. Code of Civ. Proc. § 697.340(a). The Seay Lien gained and continues to gain interest at the rate of 10% per annum, may be renewed every five years and must be renewed every ten years. When renewed, the accrued interest is added to principal to create a new principal amount, which amount then gains interest at 10% per annum until the next renewal. The Seay Judgment was always timely renewed. Thus, on the petition date, the Judgment had grown to \$3.877

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million.

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Although Debtor claimed only \$500 in assets in his schedules, Defendant decided to pursue the case as an asset case based upon evidence received from attorney Thomas Vogele ("Vogele"). Trustee employed Vogele's law firm to act as his counsel. Third party Remar Investments LP ("Remar") is a Nevada limited partnership which held a \$2 million trust deed recorded in second position (or perhaps third behind Seay) against the Property located at 518 Harbor Island Drive, Newport Beach, CA 92660 ("the Property" or "518 Property") on December 27, 2010. (See generally, 8:16-cv-00337-MWF ("Remar Appeal"), Sept. 13, 2016 Order affirming Judgment, Dkt. 23.) The 2010 note and trust deed, executed by Debtor's ex father-in-law Oscar Chacon as trustee of the 518 Harbor Island Drive Trust, "took out" a 2009 note and trust deed of \$1.5 million recorded on September 25, 2009. *Id.* In a consolidated adversary action both Defendant Trustee and Col. Seay alleged that Remar was Debtor's confederate and coconspirator in a scheme to enter into bogus transactions in order to defeat creditor claims and place artificially high encumbrances on the 518 Property.

Third party 518 Harbor Island Drive Trust ("Trust I") was a defectively formed Qualified Personal Residence Trust ("QPRT") created by Debtor on September 16, 1994 to hold title to the 518 Property. At the time of its formation, Debtor was in a separate Chapter 7 proceeding filed in December 1993. Debtor was the settlor, sole trustee and residual beneficiary of the Trust I. Trust I held nominal title to the Property from 1994 to 2001, and again from 2006 to 2014. (Remar Appeal, Dkt. 23.) The BAP ruled, however, that Trust I terminated in December 1998 at which time it reverted to Debtor individually. (*In re Ferrante*, 2015 WL 5064807 (9th Cir. B.A.P. Aug. 26, 2015) (unpublished), also at 9th Cir. Case No. 14- 1222, Dkt. 49.). Trust I was revoked by Trustee on April 7, 2014, at which time the Residence formally became an asset of the estate. But the asset was fully encumbered and had no equity. It can be argued that the property was already owned at that time by Debtor by reason of the BAP's finding, as described above, and thus the

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revocation of Trust I was unnecessary, or title had become entangled under yet further trusts, as described below.

Third party 518 Harbor Island Drive Trust III ("Trust III") is a separate and expressly revocable trust self-settled by Debtor on or about March 23, 2001. Trust III continuously held record title to the 518 Property from 2001 through September 29, 2006, including on May 20, 2004 when the Seay Judgment was recorded in Orange County, California. Both the Bankruptcy Court and District Court have ruled that because Trust III was expressly revocable, the Seay Judgment attached to the 518 Property on the date of recordation, despite ostensibly different record title.

Thomas Vogeles is a lawyer who practices in Orange County, California, through his law firm Thomas Vogeles & Associates APC ("TVA"). On the petition date, TVA represented creditor W&W Properties. In September of 2010, TVA entered into an agreement with Defendant to act as Special Litigation Counsel to the insolvent estate on a contingent fee basis to initiate litigation to recover money and property of Debtor (and hence of the estate) that was undeclared in the Schedules.

On April 7, 2014, the Trustee and Seay entered into a fully integrated written contract structured as a "Carve Out" agreement (the "Compromise Agreement" or the "Agreement"). The contract was executed four years after the petition and more than three years after appointment of Vogeles as special litigation counsel. The Agreement expressly provided that Col. Seay would defer 50% of the sums to which he was entitled under his lien to be later recouped from recoveries in the Trustee's Adversary Action. The Agreement obligated the estate to pay Col. Seay the deferred amount, plus fees and costs of every kind and nature, plus all remaining amounts under his judgment lien, from the proceeds of litigation recoveries. One of the items in contention is the corresponding obligation of Defendant to actively litigate the Adversary Action in order to obtain sufficient recovery to pay back the sums Seay carved

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out and subordinated under the Compromise Agreement. Defendant Trustee can point to ¶ 2.1.8 which reserves to the Defendant the right to discontinue any litigation the Trustee thought to be unproductive and offers Seay the right of first refusal in purchase of any such right of action.

On June 19, 2017, well over three years after the Agreement was executed, the Trustee filed the Motion to Abandon "Certain Assets." Trustee researched the value of the Remaining Assets and determined that "the assets are burdensome to the Estate or of inconsequential value and benefit to the Estate." Prior to filing the Motion to Abandon, Trustee attempted to sell these Remaining Assets to Seay. The Remaining Assets were ultimately sold to Seay as authorized by Court order.

On July 3, 2019, Plaintiff filed a Complaint, commencing the above captioned action (the "Action"). On August 2, 2019, the Trustee filed a Motion to Dismiss the Adversary Complaint (the "original Motion to Dismiss") on several grounds, including that Plaintiffs' claims were barred by the doctrines of quasi-judicial immunity, and constituted collateral attacks on the properly entered orders of the Bankruptcy Court. In response, on August 22, 2019, Plaintiff filed the First Amended Complaint ("FAC"). The Trustee filed a second motion to dismiss the FAC. On June 10, 2020, the Court dismissed the FAC and granted the Seay Estate leave to amend. Tentative Ruling at Page 12. The court's rationale was set forth in the court's Tentative Ruling, which was adopted by the court in its final ruling. The court ruled that the Trustee is entitled to quasi-judicial immunity in his individual capacity and may only be sued in his representative capacity. *Id.* The court further ruled that certain of Plaintiff's allegations, such as those related to undue influence, duress, and menace, were barred by judicial estoppel. The court dismissed the FAC to allow the Seay Estate to amend the FAC to clarify that the Trustee is named in his representative capacity only. *Id.* The court also ruled that Plaintiff's capacity to sue as estate representative must be amended as required by California law, a defect that applies equally to this Motion. *Id.* On August 9, 2020, Plaintiff filed the SAC.

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In the SAC, like the FAC, Plaintiff alleges three claims for relief:

- (1) Restitution of Benefits Conferred After Unilateral Rescission;
- (2) Common Count for Money Had and Received;
- (3) Declaratory and Injunctive Relief Regarding the Proceeds in the Segregated Account

3. The First Claim for Relief

Plaintiff's first claim for relief seeks restitution following alleged unilateral rescission. Rescission results in extinguishment of an underlying contract. Cal. Civ. Code §1688. If successful, the party seeking rescission is freed of his/her obligations under the contract. *Larsen v. Johannes*, 7 Cal. App. 3d 491, 501 (1970). As relevant here, unilateral rescission is permissible where: (1) the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party; (2) the consideration for the obligation of the rescinding party fails, in whole or in part, through the fault of the counterparty; (3) the consideration for the obligation of the rescinding party, before it is rendered to him, fails in a material respect from any cause; or (4) the public interest will be prejudiced by permitting the contract to stand. See Cal. Civ. Code §1689(b)(1).

Plaintiff seeks rescission on the grounds that: (1) "Col. Seay's consent to the contract was obtained by duress, menace, fraud and undue influence exercised by [the Trustee];" (2) "the consideration for Seay's promise failed in whole or part, through the fault of [the Trustee];" (3) "the consideration for Seay's promise failed from any cause before it was rendered to him;" (4) "the contract was entered into due to a mistake of material fact and law by the

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parties concerning Trust I;" and (5) "the contract is against public policy . . . because the Property was fully encumbered." For reasons explained below, none of these theories withstand scrutiny.

In this court's June 10, 2020 tentative ruling, the court stated:

"As noted above, in the motion to approve the Agreement, both parties agreed that the negotiations, though tense, were conducted in good faith. Plaintiff filed papers in support of the motion to approve the Agreement. It is not clear why duress or undue influence were not argued when the court approved the Agreement. If Plaintiff felt that he was being forced to accept the Agreement against his will or better judgment, it should have been raised at the time. It was not, but instead the court was specifically urged to approve the Agreement by Plaintiff." (Tentative Ruling, p. 9-10).

The tentative ruling continued:

"Perhaps the better part of valor is to grant the motion or strike portions of the FAC to the extent that they are based on duress or undue influence at the inception, because even though they appear to be properly pled, under judicial estoppel doctrines should have been brought to the court's attention at the time the Agreement was approved. Instead, at that time, Plaintiff apparently took the opposite position, and so cannot be heard now to argue this point." *Id.* at 10.

The court sees no reason to revisit the allegation that the Compromise Agreement was the product of duress, menace, or undue influence. No facts, and certainly no new facts are given in the SAC suggesting any of these factors existed, nor dealing with the judicial estoppel implicit in urging one thing upon the court to approve the Compromise Agreement, and now taking the opposition position.

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However, in dismissing the FAC, the court did not close the door on Plaintiff's fraud claim, but simply stated that the allegations were pled with insufficient particularity to comport with the requirement from Rule 9(b). Allegations of fraud are subject to a heightened pleading standard. Fed. R. Civ. P. 9(b) ("Rule 9(b)"). In all averments of fraud or mistake, the circumstances constituting fraud shall be stated "with particularity." Fed. R. Civ. P. 9(b); *Desaigoudar v. Meyercord*, 223 F3d 1020, 1022-1023 (9th Cir. 2000). Even though the substantive elements of a state law fraud cause of action are determined by state law, those elements must be pleaded with particularity as required by Rule 9(b) when brought in federal court. *Vess v. Ciba-Geigy Corp. USA*, 317 F3d 1097, 1103 (9th Cir. 2003). Although malice, intent, knowledge, and other conditions of a person's mind may be alleged generally, such allegations must still meet the plausibility standard. *Iqbal*, 556 U.S. 686-87. Rule 9(b) demands that the circumstances constituting the alleged fraud "be specific enough to give defendants notice of the particular misconduct ... so that they can defend against the charge and not just deny that they have done anything wrong." *Kearns v. Ford Motor Company*, 567 F.3d 1120, 1124 (9th Cir. 2009) (quoting *Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001)) (ellipsis in original). "Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." *Kearns*, 567 F. 3d at 1124. Fraud averments failing to meet the Rule 9(b) "particularity" standard are disregarded, and the remaining allegations evaluated to see if a valid claim has been stated. *Vess*, 317 F3d at 1105. Plaintiff also asserts, citing *Wong v. Stoler*, 237 Cal. App. 4th 1375 (2015), that rescission is an available remedy for misstatements of any kind, whether intentional, negligent or innocent by a fiduciary if the statements caused plaintiff to enter into the contract.

Here, Trustee asserts, and the court is inclined to agree, that Plaintiff has not asserted facts, taken as true, that would tend to demonstrate that Trustee or any of his associates, intentionally misled, misrepresented, or otherwise acted with fraudulent intent in obtaining Plaintiff's consent to the Agreement at the time the Agreement was signed and approved by the court.

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Plaintiff does take portions from various emails sent between and among the parties that, taken together, form a mosaic from which a picture of fraudulent behavior could arguably be gleaned. The emails suggest that Trustee and Vogele used "high-pressure" tactics upon Plaintiff to get him to sign onto the Compromise Agreement, but again, missing from the SAC is anything that suggests fraudulent intent at the time the Compromise Agreement came into existence. As Trustee argues, the closest Plaintiff really comes to clearly articulating a fraud claim against Trustee is found in paragraph 47 of the SAC, which states:

"Plaintiff alleges on information and belief that Defendant lacked the intent to comply with the estate's contractual obligations from the start. At all times Defendant had intended to cause Col. Seay to rely on his assurance to his detriment. Col. Seay reasonably relied on the Trustee's express promises in the contract and on Vogele's assurances as set forth in the "hammer and tong" email in executing the agreement. Col. Seay was induced to enter into the contract, a recognized basis for rescission, by Vogele's verbal and written misrepresentations that the estate would fulfill its obligations under the contract, actively litigate adversary claims to completion, bring millions of dollars into the estate and repay the deferred sale proceeds to Col. Seay. The truth was that neither Vogele nor Casey intended to litigate the Adversary claims for any period longer than it took to sell the 518 Property and to soak up the sale proceeds by their billings. At no time did Vogele or Casey have any intent to repay the Seay advance."

As noted, the paragraphs preceding the quoted passage, even taken as true, do not form a clear picture of fraud in the inducement. Indeed, as Trustee points out the quoted passage from the SAC is mainly conclusory and appears to just presume ill-intent rather than actually showing any facts supporting it. Conclusory statements of fraud and misrepresentation—or, as is the case here, unsupported statements of Defendant's purported intent on the basis of information and belief—are likely insufficient. See *Shelton v.*

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Ocwen Loan Servicing, LLC, 2019 WL 4747669 at *7-8 (S.D. Cal. Sept. 20, 2019). Plaintiff must clearly set out the precise circumstances that constitute fraud, or such allegations must be disregarded. *Vess*, 317 F3d at 1105. Regarding the *Wong* case cited by Plaintiff, Trustee persuasively argues that *Wong* is not as broad as Plaintiff asserts. Rather, Trustee notes that the *Wong* court observed, "[u]nder California law, negligent misrepresentation is a species of actual fraud and a form of deceit ... [and] a single misstatement as to a material fact, knowingly made with intent to induce another into entering the contract, will, if believed and relied on by that other, afford a complete ground for rescission[.]" *Wong*, 237 Cal. App. 4th at 1388. Trustee also notes that in *Wong*, the trial court expressly found that the seller had made misrepresentations and did so with reckless disregard. *Id.* As noted above, the court does not see any allegations of clear-cut misrepresentation, or even of negligent misrepresentations much less statements made with reckless disregard, whether by Trustee or any of his associates. All the court sees is an agreement that, for various reasons, went bad and Plaintiff did not receive what he hoped he would get. After all, there are no guarantees in litigation, everybody knows that, and especially parties well-represented by counsel such as in the Compromise Agreement's negotiation and approval. Moreover, Trustee was expressly permitted to abandon the adversary proceeding if he felt it was wise to do so. Paragraph 2.1.8, in describing the Trustee's duties under the agreement, provides:

Actively litigate all remaining claims in the Adversary and seek recovery of all available property for the Chapter 7 Estate, including but not limited to trial, post-trial motions and prosecution of any appeals arising out of the decision of the Court, **to the extent Trustee determines such litigation will likely result in reasonable recovery to the Chapter 7 Estate.** In the event Trustee decides to abandon any cause of action or litigation, Col Seay shall have first right of refusal to purchase all right, title and interest in said claim to pursue said litigation on his own behalf in his sole discretion, subject to further Court approval which shall include appropriate overbid procedures. (emphasis added)

This is exactly the sort of provision the court would expect from a

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trustee. Certainly, it cannot be reasonably argued that a trustee would be compelled to pursue any and all theories however far-fetched or however remote might be the prospect of monetary recovery, nor would the court approve such a thing. Indeed, as recognized throughout these pleadings, this administration proved to be extraordinarily expensive and the litigation was hard fought. The intricate defenses and evasions erected by Ferrante with assistance of others proved difficult to overcome, and the chances of recovering back the amounts expended in pursuit were close questions. The Trustee did the prudent thing in not digging a deeper hole when not warranted by the prospects of monetary recovery. Moreover, Seay ended up owning *all* of these claims for \$1, a prospect he never could have expected but for the Compromise Agreement. Implicit in Plaintiff's argument is that somehow Seay was denied the benefit of his bargain. But that holds no water either. Seay bargained for and obtained things he had no other right to expect such as Trustee revocation of Trust I (that it might arguably have been unnecessary is also beyond the point), employment of the Trustee's avoiding powers in an attempt to augment the estate, resistance to Remar and others who sought to foreclose on the Harbor Island property, and recognition of the validity of Seay's lien. All of this consideration was undeniably received as bargained for. That Plaintiff feels disappointed by this outcome is understandable, but a cause of action for fraud in the inducement, even by negligent misrepresentation, is just not made on these alleged facts.

Trustee also appears to be correct when he asserts that Plaintiff has failed to adequately support a claim for rescission based on failure of the consideration pursuant to the Compromise Agreement. Trustee persuasively argues this leg of Plaintiff's argument is merely an expression of frustration at not getting what he hoped he had bargained for. The court notes that this same argument was put forth in the FAC, and the court found it lacking support then, and maintains that opinion. Indeed, the court noted that the decision not to pursue certain claims owned by the estate did not render the consideration illusory. On the contrary, the court noted that there was express provision in the Agreement that contemplated such an outcome. The court stated in its tentative ruling:

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"According to Plaintiff, the basic terms of the Agreement were that Col. Seay agreed to 'defer' receipt of \$1.6 million (half) attributable to his lien from the sale of the Property ('Deferred Seay Proceeds') to enable the insolvent estate the liquidity to pursue Debtor and third parties for recovery of damages and undeclared assets. In this characterization the Deferred Seay Proceeds were to be later paid back out of recoveries from litigation by Trustee along with additional fees, costs and interest which accrued. But the Agreement provides for at least a subordination, and, as it developed, there was nothing left with which to pay the subordinated half of the proceeds. The Trustee was given express authority in the Agreement not to administer assets he deemed not worthwhile or feasible to administer (as any competent trustee would) and Seay was given the express option to first acquire them, which he ultimately did for \$1 (on each of two separate occasions)[.] The court approved the Agreement by Order entered on June 18, 2014 at a hearing after notice to creditors in which Seay actively joined in support of the Agreement." (Tentative Ruling, p. 5-6)

Thus, it appears that, again, Plaintiff has failed to plead facts that would tend to show a failure of consideration as to the Compromise Agreement that would support the cause of action for rescission.

Next Plaintiff argues that the cause of action for rescission is viable because Plaintiff has asserted facts that would tend to show that the compromise agreement was the result of a mistake of law and/or fact. A mistake of law is when a person knows the facts as they really are but has a mistaken belief as to the legal consequences of those facts. See, e.g., *In re Marriage of Mansell*, 217 Cal.App.3d 219, 234 (1989). A mistake of law exists only when (1) all parties think they know and understand the law but all are mistaken in the same way, or (2) when one side misunderstands the law at the time of contract and the other side knows it, but does not rectify that misunderstanding. Cal. Civ. Code § 1578. In paragraph 81 of SAC, Plaintiff

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alleges that there was the misimpression "that unless the facially irrevocable Trust I was revoked, the Seay lien was unenforceable. Vogele was able to induce Seay to execute the agreement by holding revocation hostage and refusing to revoke Trust I unless Seay signed. The misrepresentations of the law and fact by Vogele are grounds for rescission[.]"

Plaintiff alleges further in paragraphs 82 through 84 that:

"Only in 2015 did facts emerge which showed that Trust I was irrelevant to the enforceability of the Seay lien for two reasons. First, Col. Seay subpoenaed documents from Bank of America which revealed that Trust I did not own the asset when the Seay judgment was recorded in 2004. Instead the expressly revocable Trust III held record title from 2001- 2006 including the date the Seay judgment was recorded. Because Trust III was revocable the Seay lien immediately attached to the Residence under Probate Code § 18200. The discovery of Trust III led directly to the entry of the February 2016 judgment establishing Seay's priority and an order affirming the judgment in District Court in September 2016. If the parties had known of Trust III's ownership on the date of recordation the contract would not have been entered into by Col. Seay and the Vogele threats would have had no force. Second, on August 26, 2015 the BAP ruled that Trust I terminated in 1998 for failure to comply with IRS regulations and reverted to Debtor individually. The BAP opinion is now final. Therefore, as a matter of law the property was owned by Debtor individually at all times from 1998 forward and Debtor was the judgment debtor under the Seay judgment. Even though the Trustee now knows that Trust I did not exist since 1998, he continues to mischaracterize the effect of his revocation of Trust I. He insists that the Seay lien only attached to the 518 Property when he revoked Trust I. In fact the Seay lien attached to the 518 Property a full ten years before the Trustee revoked, on May 20, 2004, when the judgment was recorded and the asset was owned by the expressly revocable Trust III."

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Trustee argues that the court should disregard these allegations of mistake of fact and law, and cites *Alevy v. Seneca Ins. Co. Inc.*, 2012 WL 13012460 at *13 (C.D. Cal. 2012), where the court rejected a theory of mistake of law, where among other things, "[p]laintiff was represented by... counsel who bore the responsibility of making himself familiar with all pertinent aspects of the policy... and "[p]laintiff's counsel simply failed to take advantage of that opportunity to argue [the alleged mistake of law]." Trustee then points out that during the lengthy and tense negotiations, Plaintiff was at all times represented by counsel and that fact is acknowledged in the Agreement itself. Furthermore, Trustee also points out that the Agreement specifically acknowledges numerous factual and legal disputes in existence at the time of contracting, and resolution of such issues without the necessity of litigation was a material part of the benefit of the bargain, which seems logical as this type of Agreement is usually aimed at reducing or eliminating the need for litigation. Finally, Trustee points out that in the Plaintiff's papers in supporting the Agreement, Plaintiff acknowledged a dispute over the continued validity of the Seay lien and argued that approval of the Agreement would settle that question. Thus, Trustee persuasively argues, Plaintiff should be estopped from arguing mistake of law or fact because the dispute was known at the time of the Agreement's formation and it was Plaintiff's express desire to not engage in further litigation. As stated above, the revocation of Trust I was only part of the global arrangement, even it was Trust III that held title as determined by the BAP, that would still have required the Trustee's revocation, and the parties decided to make common cause against Ferrante and his confederates.

Plaintiff's last argument asserts that the Agreement is offends public policy because the property was fully encumbered and Trustee's administration of such an asset violates the Justice Department Guidelines and public policy as promulgated by the Office of the United States Trustee unless the agreement returns a meaningful dividend to unsecured creditors. Again, the June 10, 2020 Tentative Ruling speaks to this issue, where the

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court stated on page 12:

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"Regrettably, this kind of very expensive administration where unsecured creditors end up with nothing is not even unusual, and every case must be evaluated in its own light. This was an extremely difficult case. The facts presented to the Trustee and his lawyers at the time of the Agreement were very daunting, and the Trustee is not to be faulted for making a calculated effort."

Trustee then cites *In re Mednet*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000) where the court explained that there is no requirement that "services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." That is almost precisely the sentiment given by the court in its June 10 tentative ruling. Defendant made calculated efforts but from what the court can see the problem was that many of the defendants proved too evanescent or impecunious to be responsible in monetary recovery, or at least compared to the expense of chasing them. The court sees nothing in the SAC that would change that opinion, and so public policy is not offended.

For the reasons stated, Plaintiff's SAC has not shown the existence of facts, accepted as true, that would support a cause of action for effective rescission (and hence restitution) because both persuasive counter authority and ample evidence in the record, including many of Plaintiff's own statements and representations to the court, severely undercut the *Iqbal* and *Twombly* requirements for plausibility.

4. The Second Claim for Relief

Trustee asserts that the second claim, Common Count for Money Had and Received, is entirely dependent on the viability of the first cause of action.

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Quoting paragraph 96 of the SAC, Trustee argues that ("Under California law, a party to a contract may plead a cause of action for restitution after unilateral rescission by way of a common count for money had and received, and hereby does so." But as discussed above, Plaintiff's asserted justifications for unilateral rescission are largely unsupported by law and fact, and non-existent.

5. The Third Claim for Relief

Plaintiff's Third Claim for Relief for Declaratory Judgment also fails. Plaintiff seeks an order declaring that the Carve-Out in the Agreement constitutes "cash collateral" entitled to "adequate protection" which requires Plaintiff to prevail on the claim for rescission. Pursuant to the Agreement, Col. Seay agreed to Carve-Out 50% of the proceeds of the sale of the Property to be disbursed to the estate. The Agreement provided that the balance of his claim will be unsecured and subordinated to other unsecured and administrative claims. As the Court has expressed in its July 21, 2020 adopted Tentative Ruling: "[w]ithout a lien, Seay cannot now be heard to argue about cash collateral or adequate protection, as those concepts are only appropriate in the context of a secured claim." See Tentative Ruling on Plaintiff's Motion for Order Requiring Accounting, Restoration of Unauthorized Payments, And Adequate Protection at 24-25. As such, Plaintiff's declaratory judgment claim for adequate protection cannot stand without the rescission claim, and Plaintiff has, again, failed to state a claim pursuant to Rule 12(b) (6).

6. Conclusion

Although Plaintiff's SAC contains more factual detail than the FAC, it makes little difference because many of the arguments are simply arguments that the court has heard and rejected before. Plaintiff marshals facts as best he is able, but in the end, does not quite paint the picture that Plaintiff would

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like the court to see. Furthermore, Trustee has convincingly presented counter authority and evidence in the record that casts serious doubt upon the allegations, but more importantly, on whether the allegations can support any of the asserted causes of actions within the *Iqbal* and Twombly standards. As the court has opined in the past, this was an extremely difficult case and any trustee would have encountered some or all of the same issues as Trustee did here.

The remaining question is whether Plaintiff should be given further leave to amend. Trustee persuasively argues that this is Plaintiff's third bite (maybe fourth depending on how counted) at the apple and that if this motion is granted it is extremely unlikely that Plaintiff will be able to make any new arguments that would move the needle. The court has already expressed its skepticism that there is really anything here besides a bitterly disappointed plaintiff. Thus, in keeping with the spirit of the original Compromise Agreement that spawned this litigation, further litigation seems both unnecessary and undesirable. Further leave to amend will be denied.

Grant without leave to amend

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):

Nancy Klein

Represented By
Natasha Riggs

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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
Brendan Loper
Cathrine M Castaldi

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#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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8:18-10215 Isabel Garcia Rainey

Chapter 13

**#1.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 9-22-20 per order granting stip. cont. hrg re: mtn entered
9-18-20)**

**CITIMORTGAGE, INC.
Vs.
DEBTOR**

Docket 50

Tentative Ruling:

Tentative for 10/13/20:

The motion was filed in June. It has been continued by stipulation four times so the parties could try to work on an APO. Status? Appearance is optional.

Party Information

Debtor(s):

Isabel Garcia Rainey

Represented By
Craig J Beauchamp

Movant(s):

CitiMortgage, Inc.

Represented By
Robert P Zahradka

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-10808 Jack Dennis Mitchell and Kathleen Marie Mitchell

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTORS**

Docket 54

Tentative Ruling:

Tentative for 10/13/20:
Grant absent APO or current post confirmation status.

Party Information

Debtor(s):

Jack Dennis Mitchell

Represented By
Nicholas M Wajda

Joint Debtor(s):

Kathleen Marie Mitchell

Represented By
Nicholas M Wajda

Movant(s):

U.S. Bank National Association

Represented By
Eric P Enciso

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-11749 Navarrete Investments, LLC

Chapter 11

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**MARK LEONARD
Vs.
DEBTOR**

Docket 54

Tentative Ruling:

Tentative for 10/13/20:

This is an admitted single asset real estate case. There is likely no equity although debtor has produced an optimistic appraisal at \$1.41 million which, if accurate, might suggest a sliver of equity above costs of sale, but eroding fast. Strangely, movant did not check the box for relief under §362(d)(3) although it would seem that section does apply since no plan is filed and no payments were made within 90 days of the petition (although debtor alleges he has offered \$9000 per month). But even without reference to §363(d)(3) under (d)(2) it is likely there is no equity [based on the fact that the property has been on the market several months without result] and the property is not necessary to an effective reorganization. Effective is the key word as derived from *United Savings v. Timbers of Inwood Forest* 484 U.S. 365, 355 (1988) to mean one in prospect within a reasonable time. There likely is no reorganization possible to service this much debt and the only solution is a sale, but that has been ineffective to date at the listing price or at any price that would clear the debt. It is not reasonable to impose all of the risk upon the creditor without better prospects of a solution at hand.

Grant under (d)(2) and (d)(3).

Party Information

Debtor(s):

Navarrete Investments, LLC

Represented By
Julian K Bach

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Chapter 11

Movant(s):

Mark Leonard, a married man as his

Represented By
Bonni S Mantovani

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8:20-12476 EDC, LLC

Chapter 11

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

**PAUL EDELSTEIN
Vs
DEBTOR**

Docket 24

Tentative Ruling:

Tentative for 10/13/20:
grant for purposes of liquidating and characterizing claim. Execution to
require further order. Appearance is optional.

Party Information

Debtor(s):

EDC, LLC

Represented By
Jay W Smith

Movant(s):

Paul Edelstein

Represented By
Fritz J Firman

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8:20-11560 Joe Anthony Santa Maria

Chapter 7

#5.00 United States Trustee's Motion To Delay Entry Of Discharge And To Extend Time To File A Motion To Convert Case To A Case Under Chapter 11 To December 15, 2020 Under And Pursuant To 11 U.S.C.§706

Docket 15

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION BETWEEN DEBTOR AND USTR TO DELAY ENTRY OF DISCHARGE TO EXTEND TIME TO FILE A MOTION TO CONVERT CASE TO CH 11 ENTERED 10-06-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Anthony Santa Maria

Represented By
Nicholas W Gebelt

Trustee(s):

Richard A Marshack (TR)

Pro Se

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8:18-11154 i.i. Fuels, Inc.

Chapter 7

**#6.00 Chapter 7 Trustee's Motion For Order Extending Time To File Avoidance
Actions Under 11 U.S.C. § 546**

Docket 72

Tentative Ruling:

Tentative for 10/13/20:
Grant 90 days. Appearance optional.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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8:18-12220 Cat Kenny Nguyen

Chapter 7

#7.00 Amended Trustee's Final Report And Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

RINGSTAD & SANDERS LLP, ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CH 7 TRUSTEE

Docket 138

Tentative Ruling:

Tentative for 10/13/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Cat Kenny Nguyen

Represented By
Gregory L Bosse

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

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

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#8.00 Motion to Approve Compromise By and Between the Chapter 7 Trustee, On the One Hand, and Linda Martz-Gomez, On Her Own Behalf and On Behalf of Others Similarly Situated, On the Other, As to the Claims Asserted Against the Estate in Class Action Adversary Proceeding No. 8:15-ap-01293-TA, Pursuant to F.R.B.P. 9019 and 7023

Docket 2809

Tentative Ruling:

Tentative for 10/13/20:

This is a motion to approve compromise by and between the chapter 7 trustee, Karen Sue Naylor ("Trustee") on the one hand, and Linda Martz-Gomez ("Plaintiff"), on her own behalf and on behalf of others similarly situated, on the other, as to the claims asserted against the estate in class action adversary proceeding no. 8:15-ap-01293-TA, Pursuant to F.R.B.P. 9019 and 7023. The motion is joined by the Plaintiff. The motion is opposed by Anna's Linens, Inc.'s ("Debtor's") former President and CEO, Scott Gladstone ("Gladstone").

1. Background

The Debtor filed a voluntary Chapter 11 on June 14, 2015 (the "Petition Date"). An Order Converting Case to Chapter 7 was entered on March 30, 2016 (the "Conversion Order") [Dkt. No. 1455]. Trustee was appointed on March 31, 2016 [Dkt. No. 1458]. Debtor was a specialty retailer offering home textiles, furnishings, and décor through a chain of 261 company owned retail stores throughout 19 states in the United States, including Puerto Rico and Washington, D.C. It was headquartered in Costa Mesa, California, and employed a workforce of over 2,500. As of the Petition

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Date, the Debtor remained in operation but immediately thereafter requested that the Court authorize the commencement of asset sales and store closures, which were intended to complete liquidation of the Debtor's operating assets in short order. Various employees were terminated on about June 19, 2015, without the distribution of notices allegedly required under either the WARN Act or CAL-WARN Act.

A. The WARN Act Adversary Proceeding.

Certain employees of the Debtor contend that the Debtor's post-petition termination of their employment was in violation of the WARN Act or CAL-WARN Act, and on July 1, 2015 filed their Class Action Adversary Proceeding Complaint [Violation of Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 – 2109 and California Labor Code §§ 1400 et seq.] (the "Adversary Complaint"), commencing the Adversary Proceeding [Adv. Dkt. 1]. Linda Martz-Gomez, a district manager employed by the Debtor in Texas, filed the Adversary Complaint in her capacity as Class Representative.

By the Adversary Complaint, the Class Representative sought damages, on an allowed first priority administrative claim basis pursuant to 11 U.S.C. § 503(b)(1)(A), in an amount "equal to the sum of: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay pension and 401(k) contributions and other ERISA benefits, for 60 days, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period", or alternatively, for a determination that "the first \$12,475 of the "WARN Act claims of Plaintiff and each of the similarly situated former employees were entitled to priority status under 11 U.S.C. § 507(a)(4) and (5)", with the remainder allowed as a

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general unsecured claim. [Adversary Complaint, Adv. Dkt. 1].

On August 24, 2015, the Debtor filed its Answer to Class Action Adversary Proceeding Complaint [Violation of Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101– 2019 and California Labor Code §§ 1400 et seq.] [Adv. Dkt. 12], admitting that the Class Representative and certain other employees were discharged on or about June 19, 2015 without any WARN Act notifications, but otherwise generally denying the allegations of the Adversary Complaint and asserting affirmative defenses based upon certain exceptions (liquidating fiduciary, unforeseen business circumstances, and faltering company) to the provisions of the WARN statutes.

On December 18, 2015, the Class Representative filed her Motion for Class Certification and Related Relief [Adv. Dkt. 19]. The Debtor opposed class certification, filing its Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Class Certification and Related Relief [Adv. Dkt. 25], with the Class Representative thereafter filing her Reply in Support of Motion for Class Certification and Related Relief [Adv. Dkt. 27]. At a hearing held on February 25, 2016, the court granted the Motion for Class Certification, with an order as to same entered on March 14, 2016 (the "Class Certification Order") [Adv. Dkt. 34]. The Class Certification Order appoints the Class Representative and appoints the firm of Outten & Golden LLP as Class Counsel. The Class Certification Order further (a) approved a proposed form of notice to the Class, (b) instructed the Debtor to provide Class Counsel with the names and addresses of Class members, (c) directed Class Counsel to serve the approved form of notice on the Class and thereafter file a sworn statement affirming compliance with such directive, (d) established the deadline for any Class member to opt-out of the Class and directed Class Counsel to thereafter file a sworn statement listing the names of any persons

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who have opted out of the Class, and (e) found that the notice requirements established were the "best notice practicable under the circumstances and constitute[d] due and sufficient notice to all class members in full compliance with the notice requirements of Fed. R. Civ. P. 23."

On March 30, 2016, the Conversion Order was entered and on April 27, 2016 the Class Representative served her first round of formal discovery on the Trustee. Thereafter the Parties entered into a series of stipulations to modify adversary case scheduling orders regarding discovery deadlines and related pleadings. The Parties have reportedly been engaged in good faith, arms-length settlement discussions since 2018, including the informal exchange of damage calculations and relevant documents and information.

On or about January 1, 2020, two of the attorneys at Class Counsel formed a new firm, Raisner Roupinian LLP, and, with the consent of Class Counsel and the Class Representative, the representation of the Class Representative and the Class was transferred to the new firm. As such, when the term Class Counsel is used hereinafter and in the Proposed Settlement Agreement, the reference is to the Raisner Roupinian firm.

B. Current Status of the Estate.

As of this date, the assets of the Estate consist of, among other things, cash in the approximate amount of \$7,328,865.01. Of this amount, \$700,000 has been earmarked for the benefit of specific classes of creditors per orders of the court entered pre-conversion. As set forth in the Declaration of Chapter 7 Trustee, Karen Sue Naylor, in Support of Interim Fee Applications, General Case Status [Dkt. No. 2791], filed with the Court on June 9, 2020:

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"As of the date hereof, multiple adversary proceedings remain pending. One, referred to in the R&S Application as the "Warn Act Adversary", involves the claims of the Debtor's former employees for alleged post-petition violations of the Federal and California WARN Act statutes, and seeks multiple seven-figures in damages. With the assistance of my special litigation counsel in that matter, settlement discussions are progressing, and I hope to have this matter, which will result in a Chapter 11 administrative claim against the Estate, resolved this year. Until this adversary is resolved and the Chapter 11 administrative claim determined/allowed, Trustee is unable to create a claims waterfall analysis demonstrating likely distributions to Chapter 11 administrative creditors or seek an order of the Court authorizing interim distributions to Chapter 11 administrative creditors."

Four preference recovery adversary proceedings are pending against officers of the Debtor who took withdrawals from the Debtor's Deferred Compensation Plan. By these adversary proceedings, Trustee is seeking to recover approximately \$1,200,000. As set forth in the R&S Application, these adversary proceedings are being vigorously defended by the defendants, with the Debtor's D&O carrier reimbursing the defendants their costs of defense. Don Fife is Trustee's expert witness in these adversary proceedings. His expert report was transmitted to the defendants on June 5, 2020, a discovery cut-off date of August 28, 2020 is pending, and the matters are scheduled for pre-trial conference on October 29, 2020.

Lastly, an adversary action was commenced against Gladstone seeking to recover damages for his alleged negligence in failing to direct the Debtor to abide by the Federal and California WARN Act statutes when he ordered postpetition layoffs. This alleged failure resulted in the commencement of the WARN Act Adversary referenced above. The

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adversary against Mr. Gladstone is presently being held in abeyance until the WARN Act Adversary is resolved, as such resolution will establish the Estate's alleged damages.

This Motion relates to the "WARN Act Adversary" and, if approved by the Court, will fix the Estate's damages against Gladstone, the Debtor's former president, and his alleged negligence in failing to direct the Debtor to abide by the Federal and California WARN Act statutes when he ordered post-petition layoffs, as asserted in *Naylor v. Scott Gladstone, et al.*, 8:17-ap-01105 TA.

2. The Settlement Agreement

As described by Trustee, the salient terms of the proposed Settlement Agreement are as follows:

(1) The Class, as defined in the order granting class certification that was entered on March 14, 2016, is comprised of: the Class Representative and all other similarly situated former employees who worked at or reported to the facility located at 3550 Hyland Avenue, Costa Mesa, California who were terminated without cause on or about June 19, 2015, within 30 days of June 19, 2015, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered by Defendants on or about June 19, 2015, who are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), and who have not filed a timely request to opt-out of the class. The members of the Class (the "Class Members") are listed on Exhibit A to the Proposed Settlement Agreement;

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(2) The Class shall be allowed a Chapter 11 administrative claim, pursuant to 11 U.S.C. § 503(b)(1)(A) (the "Settlement Class Claim"), in the amount of \$1,200,000.00 (the "Proposed Settlement Payment");

(3) The Trustee makes no representations or warranties regarding the ultimate distribution to be received by the Class on account of the Settlement Class Claim and/or the Settlement Payment through the Trustee Final Report ("TFR") process, however the Trustee may seek Court approval to make an interim distribution to all holders of allowed Chapter 11 administrative claims following final court approval of the Proposed Settlement;

(4) The Proposed Settlement Payment shall be used to satisfy any and all obligations of the Estate to the Class, including but not limited to the obligation to pay the Class Representative Service Payment, Class Counsel's Fees, Class Counsel's Expenses, Settlement Administration Costs, and all payroll taxes including the Debtor's or the Estate's portion of the payroll taxes, as defined in Paragraph 6(a) of the Proposed Settlement Agreement;

(5) In exchange for the allowance of the Settlement Class Claim, and any distributions from the Estate on account of such allowed claim, the Class Representative and Class Members shall fully and completely release the Trustee, the Estate and the Debtor for any and all claims arising out of the alleged WARN Act and CAL-WARN Act violations as alleged in the Adversary Proceeding, including waivers of known and unknown claims pursuant to California Civil Code Section 15425;

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(6) The Proposed Settlement Agreement establishes the specific obligations of Class Counsel and the Settlement Administrator in administering the Proposed Settlement Payment, and the mechanism for seeking court approval of the Proposed Settlement, including notices to the Class, objections to the settlement procedures by Class Members, and the treatment of any residual Proposed Settlement Payment funds. In particular, Class Counsel shall be responsible for the production and mailing of all notices required to be provided to the Class Members ("Class Notices"). The address of Class Counsel will be used as the return address for the Class Notices and Class Counsel will respond to all inquiries of the Class arising from or related to the Proposed Settlement. Subject to the Trustee's review and approval, Class Counsel shall be responsible for calculating the allocation of each Class Member's net share of the Proposed Settlement Payment. In addition, certain Class Members have filed formal proofs of claim ("POCs") against the Estate, some of which include claims for WARN Act violations. The Trustee will provide Class Counsel with all such POCs. Class Counsel will review such POCs and provide the Trustee with a schedule setting forth the portion of each claim appropriately attributable to the Allowed Class Claim. With the information provided by Class Counsel, the Trustee will file, as appropriate, objections to such POCs to reduce the claims by the amounts identified by Class Counsel. Class Counsel and the affected Class Members agree not to oppose the reduction of their respective POCs consistent with the information provided by Class Counsel. The Trustee is not precluded from including in any such objections additional objections to other aspects of the POCs not related to the WARN Act violation claims compromised by the terms of the Proposed Settlement Agreement;

(7) Allocation of the Settlement Payment and Disbursement of the Net Settlement Amount to Class Members. The "Net Settlement Fund" is the

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Proposed Settlement Payment less the Class Representative Service Payment, Class Counsel's Fees, Class Counsel's Expenses, Settlement Administration Costs, and the Debtor's or the Estate's share of payroll taxes. "Settlement Administration Costs" means the fees and expenses reasonably and necessarily incurred by the Settlement Administrator as a result of administering the Proposed Settlement, as approved by the Court, including but not limited to: all costs and fees associated with preparing, issuing, and mailing any and all notices and other correspondence to Class Members; all costs and fees associated with mailing the Class Members' pro rata shares and all other payments required by the Proposed Settlement; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering the Proposed Settlement; and any other costs and fees incurred or charged by the Settlement Administrator in connection with the execution of its duties under the Proposed Settlement, including without limitation printing, distributing, and tracking documents for the Proposed Settlement, tax reporting, submitting payroll taxes on behalf of the Debtor or the Estate from the Settlement Payment, and providing necessary reports and declarations at the Parties' request. Class Counsel has retained the services of American Legal Claim Services, LLC as the Settlement Administrator, and the Trustee, on behalf of the Estate, agrees not to oppose Settlement Administration Costs not to exceed \$7,000;

(8) Class Counsel's Fees and Class Counsel's Expenses. The Trustee, on behalf of the Estate, agrees not to oppose an application or motion by Raisner Roupinian LLP for an award of their attorneys' fees ("Class Counsel's Fees") in the amount of up to one-third (1/3) of the Settlement Payment, net of (a) litigation expenses (including costs associated with the production and mailing of the notice of settlement and the cost of the settlement administrator) not to exceed \$10,000 ("Class Counsel's Expenses"), and (b) the Class Representative Service Payment (defined below). Class Counsel's Fees and Class Counsel's Expenses will be paid to Class Counsel (according

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to instructions to be supplied by Class Counsel) contemporaneously with the distribution of proceeds from the Settlement Class Claim to Class Members and shall be payment in full for Class Counsel's work and expenses in connection with the Adversary Proceeding or the Allowed Class Claim. For the avoidance of doubt, the Parties agree that Class Counsel's Fees and Class Counsel's Expenses shall be payable solely from the Proposed Settlement Payment and from no other source;

(9) Service Payments to the Class Representative. The Trustee, on behalf of the Estate, agrees not to oppose a one-time payment of Ten Thousand Dollars (\$10,000) to Class Representative Linda Martz-Gomez as compensation for her service in this matter and in exchange for a general release of all known and unknown claims ("Class Representative Service Payment"). The Settlement Administrator shall distribute this payment to the Class Representative in addition to her pro rata share of the Net Settlement Payment, and Class Counsel's Fees shall not be deducted from the Class Representative Service Payment. For the avoidance of doubt, the Parties agree that the Class Representative Service Payment shall be payable solely from the Proposed Settlement Payment and from no other source. The Class Representative Service Payment shall be characterized as non-employee compensation to the Class Representative and shall be reported to any applicable taxing authorities on behalf of the Class Representative on a Form 1099 issued to the Class Representative with her taxpayer identification number;

(10) Disbursement of Settlement Fund Payments. Class Counsel, through the services of the Settlement Administrator, shall be responsible for the preparation and mailing of the individual settlement checks to Class Members, withholding and paying all applicable taxes (both Class Member and on behalf of the Debtor and/or the Estate), remitting Class Counsel's

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Fees and Expenses, preparing all tax forms required in connection with the Proposed Settlement in accordance herewith and with any other orders of the Court, and shall bear the expense for the preparation and mailing of such settlement checks and tax forms. Payroll withholding shall include all applicable federal and local income taxes, and statutory taxes including, without limitation, Federal Insurance Contribution Act ("FICA") and federal and state unemployment insurance ("UI") amounts associated with the distributions to Class Members receiving payments under the Proposed Settlement Agreement (collectively, "Payroll Taxes"). The Settlement Administrator shall determine the amount of any Payroll Taxes that will become due and owing and shall withhold such amounts. All such Payroll Taxes shall be paid promptly to the appropriate taxing authorities. The Settlement Administrator shall determine the employer's share of all FICA and UI amounts which shall be deducted from the Proposed Settlement Payment and shall pay the employees' share of such taxes by deducting such amounts from the Class Members' pro rata shares of the Proposed Settlement Payment. The Settlement Administrator shall be responsible for fulfilling reporting requirements, including federal and state payroll tax returns, the issuance of Forms W-2 and other required federal and state tax forms, and related matters. For the purpose of calculating applicable taxes, the Parties agree that eighty percent (80%) of the amounts actually paid to the Class Members after deducting Class Counsel's Fees and Expenses, including the cost of the Settlement Administrator, and the Class Representative's Service Payment, but before deducting employee taxes, shall constitute wages reportable on Internal Revenue Service Form W-2, and twenty percent (20%) shall constitute health insurance payment amounts not subject to backup withholding or employment taxes to the extent consistent with Internal Revenue Code Regulations;

(11) The Trustee agrees to file a motion under Fed. R. Bankr. P. 9019 and 7023 for approval of the Proposed Settlement through a bifurcated hearing

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process, whereby an initial hearing will be held at which time the Parties shall seek entry of an order of the Court preliminarily approving the Proposed Settlement and approving the form and manner of notice to the Class Members of the Proposed Settlement, including, among other things, their right to object to the Proposed Settlement in person or to appear by counsel. The Parties shall also request a date for a fairness hearing ("Fairness Hearing"). At the Fairness Hearing, the Parties shall request that the Bankruptcy Court shall consider final approval of the Proposed Settlement. The Proposed Settlement is subject to entry of a final order by the court, after notice and hearing to creditors and parties in interest, in accordance with applicable law and local rules (the "Settlement Order"). The Settlement Order shall be deemed final when fourteen (14) days have elapsed from the entry of the Settlement Order, with no notice of appeal filed, or after the Settlement Order is finally affirmed on appeal, whichever first occurs; and,

(12) Upon entry of a final non-appeal order approving the Proposed Settlement, the Adversary Proceeding shall be dismissed, with prejudice, by stipulation of the Parties. Attached hereto as Exhibit "2" is the proposed form of notice to Class Members of the Proposed Settlement, the Fairness Hearing, and their right to object to the Proposed Settlement (the "Notice"). The Parties submit that the Notice comports with the requirements of FRBP 7023(e) and provides fair and reasonable notice to the Class Members of the Proposed Settlement and the right of any Class Members to request exclusion from the Class pursuant to section (e)(5).

3. The A&C Properties Factors

A bankruptcy court may approve a compromise or settlement on motion by the trustee after notice and a hearing. Fed. R. Bankr. P. 9019(a). A bankruptcy court should affirm a compromise agreement if it was negotiated

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in good faith and it is fair and equitable. *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). In determining the fairness, reasonableness, and adequacy of a proposed settlement agreement, the court must consider:

1. The probability of success in the litigation;
2. The difficulties, if any, to be encountered in the matter of collection;
3. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Id.*

The court does not need to conduct an exhaustive investigation into the validity of the asserted claim. *U.S. v. Alaska Nat'l Bank of the North (Matter of Walsh Const., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). It is sufficient that the court determines that the claim has a substantial foundation and is not clearly invalid as a matter of law, or that the outcome of the claim's litigation is doubtful. *Id.* The court must determine whether the compromise is in the best interest of the bankruptcy estate. *A & C Properties*, 784 F.2d at 1382. These factors are separately analyzed below:

a. Probability of Success in Litigation

Trustee argues that it is unclear whether the Class Representative will ultimately succeed in establishing the claims of the Class against the Estate. While the Trustee, based upon the advice of her special litigation counsel, believes that the Estate may have defenses to the claims asserted under the WARN Act, it is less clear that such defenses will be effective against the claims asserted under the CAL-WARN Act. Trustee contends that the terminations were caused by a sudden and dramatic event outside of Debtor's control and that, at the time WARN notice was due, it was actively

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seeking capital or financing that would have allowed it to avoid the terminations. (Adv. Dkt. 12 at 11). Plaintiff contends that the terminations were foreseeable more than 60 days prior to June 19, 2015, and that the events that led to the terminations were not only foreseeable, but inevitable. Plaintiff also contends that the unforeseeable business circumstances exception does not apply under the CAL-WARN Act, that the Trustee is foreclosed from asserting the faltering company exception under the CAL-WARN Act because no determination from the Department of Industrial Relations (DIR) was requested at the time of the layoffs, and that none of the federal WARN Act statutory exceptions are applicable because, among other things, no written notice was provided to the Class Members.

Gladstone argues that Trustee has a high likelihood of success defending against the Plaintiff's federal WARN Act claims but only possibly (not necessarily likely) a lower likelihood of success in defending against Plaintiff's CAL-WARN Act claims. Gladstone argues that at the very least, a Settlement Payment of \$1.2 million is unjustifiably high. Gladstone argues that the Trustee obtained no or little discount on the WARN Act claims even though the Trustee is settling at a very early stage of the lawsuit, without requiring the WARN Act Plaintiffs to conduct any discovery and without causing the Plaintiff's and their counsel to incur any cost or fees in prosecution of their claims. Furthermore, Gladstone argues that there is nothing complicated about the WARN Act claims alleged by Plaintiffs or the Estate's defenses thereto. According to Gladstone, certain of the Estate's defenses, such as the "faltering company" exception raise issues of law that can easily be adjudicated through a pre-trial and dispositive motion, thus potentially avoiding the need to conduct lengthy or costly discovery.

Plaintiff argues that the settlement figure is not unreasonable and Class Counsel initially calculated the Class' maximum WARN damages of 60

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days' wages and benefits at \$1.9 million for the smaller class of 111 class members, exclusive of reimbursable medical expenses compensable under California Labor Code 1402(a)(2), the employer's payroll obligations, the cost of providing notice to the class, and the cost of administering the settlement. The proposed settlement amount, allegedly, represents an approximately 60% recovery of the fuller Class' maximum WARN damages again, exclusive of reimbursable medical expenses compensable under California Labor Code 1402(a)(2), the employer's payroll obligations, the cost of providing notice to the class, and the cost of administering the settlement. Plaintiff asserts that should the proposed settlement not be approved, and the Class were to prevail on the merits, Class Counsel would seek its attorneys' fees, pursuant to 29 U.S.C. § 2104(a)(6). Under those circumstances, Class Counsel estimates the exposure to the estate could easily exceed \$3 million. (Roupinian Decl., ¶ 19).

There seems to be general agreement that Trustee's likelihood of successfully defending against the federal WARN Act claims is higher than on the CAL-WARN Act claims. But even a high likelihood of success does not equate to certainty, whereas a settlement does. To that end, Trustee points out that the "faltering company" defense may not find purchase here because, she argues, under 29 U.S.C. sec. 2102(b)(1) and Cal. Lab. Code sec. 1402.5(d), the exception applies to single site plant closures, not mass layoffs as occurred in this case. In any event, litigation, regardless of how strong a defense may seem, is likely to be expensive and laborious. Also, Plaintiff points out, if the settlement is not approved, the estate is potentially exposed to more than twice the amount of the settlement. Trustee notes that, Gladstone aside, no other interested party, creditor or otherwise, has opposed this settlement. Trustee posits that Gladstone's true motive in opposing this motion is that he seeks to avoid or at least limit the Estate's claims against him for his alleged negligence as CEO and Chairman of the Board of the Debtor in failing to ensure that the applicable WARN statute(s)

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was/were complied with when he ordered the June 2015 post-petition mass layoff of the Debtor's employees. Furthermore, Gladstone's assertion that the issues are not complicated itself seems overly simplistic as it is unknown what evidence might be discovered and how the potential litigation would shake out, especially given the partial description of Plaintiff's litigation strategy.

b. Difficulty in Collection

By mutual agreement this factor does not apply.

c. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it

As noted above, Gladstone asserts that the litigation ought to be straightforward and the issues are not complex. In fact, Gladstone asserts that many of the issues raised can be dispensed with through dispositive and pre-trial motions. Unsurprisingly, Plaintiff and Trustee assume the opposite position. For example, Plaintiff asserts that the allegations and the Debtor's defenses to the claims under the WARN Acts are fact intensive and require discovery. Discovery regarding the Debtor's financial affairs leading up to the terminations would also be fact intensive and lengthy, significantly reducing the funds ultimately available for creditors. Plaintiff also points out that it is likely that, regardless of the outcome of a trial, there would be an appeal, resulting in further lengthy delays. Trustee also points to her own diligence in retaining special counsel to litigate the WARN Act claims, whose efforts of over more than year enabled targeted and productive settlement discussions, which result in the proposed Settlement Agreement. Trustee has also taken steps to liquidate certain estate assets, which resulted in greater recoveries for Chapter 11 administrative claims, which claims total in excess of \$5,400,000 before consideration of the Proposed Settlement. Thus, Trustee

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argues, her diligence in this matter undercut the suggestion that she is merely feigning concern over delays in the WARN Act litigation. Trustee and Plaintiff have persuasively argued that the issues involved could potentially become quite complex given the fact intensive nature of the allegations. This factor tilts in favor of granting the motion. But the biggest issue the court sees is part of this *A&C Properties* factor, *i.e.* ongoing expense from diminishing resources. The court will call it the "melting ice cube" factor. Consider the Trustee's report on the estate's current financial condition:

"At present I hold cash in the approximate amount of \$7,328,572.67. Of that amount, \$700,000 has been earmarked for the benefit of specific classes of creditors as per orders of the Court entered pre-conversion. At present, allowed and unpaid Chapter 11 administrative claims (Section 503(b)(9) claims, landlords, miscellaneous chapter 11 unpaid vendor claims and the claims of employed professionals) are approximately \$5,400,000, before the Proposed Settlement, with additional claims requiring my review. The total likely distribution to allowed Chapter 11 administrative claims cannot be finally determined until after final administration and allowance of final Chapter 7 costs fees and costs. As such it remains uncertain whether Chapter 11 administrative claims will be paid in full, with or without the Proposed Settlement." Trustee's Reply, p. 25.

Do the arithmetic. The Trustee is reporting that the estate is already teetering on administrative insolvency assuming only a \$1.2 million recovery for the class. Depending on how the remaining litigation pans out, it is altogether likely that even administrative claims will not be paid in full in this case. So, the ancient proverb comes to mind: "If you find yourself in a hole...stop digging."

d. Best Interest of Creditors

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Trustee argues that absent settlement, the Parties anticipate another year or perhaps two of expensive litigation, including formal discovery, before the Class Claim will be brought to trial. Of particular importance, Trustee argues, the Proposed Settlement provides for the complete administration, calculation, and payment of the Class Claims, including withholding and funding of payroll taxes, both of Class members and of the Estate, thereby eliminating the substantial administrative costs the Estate would incur in performing these services.

Gladstone argues that the proposed Settlement Agreement is not in the best interests of the estate's creditors because it proposes to treat the class members as entitled to administrative claims. Gladstone points out, citing *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 979 (2017), that the Bankruptcy Code sets forth a basic system of priority, which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate. Gladstone also asserts that at least one post-*Jevic* court has recognized that "[i]n light of the Supreme Court's recent ruling in *Jevic*, parties who seek approval of settlements that provide for a distribution in a manner contrary to the Code's priority scheme should be prepared to prove that the settlement is not only 'fair and equitable' ... but also that any deviation from the priority scheme for a portion of the assets is justified because it serves a significant Code-related objective." *In re Fryar*, 570 B.R. 602, 610 (Bankr. E.D. Tenn. 2017).

Here, Gladstone argues, it is possible that class members would only be entitled to fourth or fifth priority as wage claims with the balance of the claims that is not entitled to priority under Sections 507(a)(4)-(5) treated as a bifurcated unsecured claim. 11 U.S. Code § 507(a)(4)-(5); see *In re First Magnus Fin. Corp.*, 403 B.R. 659, 666 (D. Ariz. 2009) (holding that WARN Act damages should not be awarded administrative priority status because they

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"are not necessary to maintain the debtor as a going concern, nor are they necessary to preserve the bankruptcy estate during the liquidation process.") Both Trustee and Gladstone acknowledge that there is persuasive authority suggesting that post-petition WARN Act claims can be entitled to administrative priority, but there does not appear to be controlling authority in the Ninth Circuit. Plaintiff also points out that settling the case now obviates the need for expenditure of time and money in litigation, which works to the benefit of all creditors.

As there does not appear to be controlling authority in this circuit on the issue of priority for these class members it is difficult to assess this issue with precision. But as noted, there is at least a line of authority that suggests administrative claim priority status for post-petition WARN Act plaintiffs is the correct posture. See *In re Powermate Holding Corporation*, 394 B.R. 765, 776-77 (Bankr. D. Del. 2008) (construing WARN claims as severance pay, the court determined that the WARN claims "vest" at the time of the employees' termination, thereby making them entitled to administrative expense claims in a post-petition termination.) Furthermore, Trustee argues that all courts addressing the issue conclude that employee terminations which occur after the commencement of the case would satisfy section 503(b)(1)(A)(ii). See *In re First Magnus Fin. Corp.*, 390 B.R. 667, 679 (Bankr. D. Ariz. 2008), *aff'd*, 403 B.R. 659 (D. Ariz. 2009); *In re Powermate Holding Corp.*, 394 B.R. 765 (Bankr. D. Del. 2008); *In re Philadelphia Newspapers, LLC*, 433 B.R. 164, 173-74 (Bankr. E.D. Pa. 2010). Trustee's persuasive authority is likely sufficient for purposes of this motion. The issue is unquestionably a gamble. Gladstone's argument to keep plowing ahead in the hope this is resolved in favor of the estate sounds like an encouragement to continue doubling down on a shaky bet in the hopes of winning, which is considerably easier to argue if one is using other people's money.

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Finally, although Gladstone asserts his own status as a creditor, it likely bears repeating that no other creditor or interested party opposed the motion or joined Gladstone's opposition to the proposed Settlement Agreement, and Gladstone's self interest in keeping the settlement low or non-existent cannot be ignored. Thus, although Gladstone may not be pleased with the Settlement Agreement for any number of reasons, his dissatisfaction alone does not mean that the Settlement Agreement is not in the best interests of the estate's creditors taken as whole.

4. Compliance with FRBP 7023

FRBP 7023 (e) provides, in pertinent part:

(e) The Claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

- (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
- (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
- (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
- (4) If the class action was previously certified under rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

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(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Here, Trustee asserts that the Proposed Settlement satisfies the above requirements in that:

- (1) The Parties are requesting that the court approve the proposed form of Notice, which is fair and reasonable, providing a comprehensive description of the Proposed Settlement and the options of each Class Member in considering same;
- (2) The Parties are requesting that the court preliminarily or conditionally approve the Proposed Settlement, thereafter, requiring a Fairness Hearing so that it may determine that the Proposed Settlement is in fact fair, reasonable and adequate;
- (3) The full, complete and fully executed Proposed Settlement Agreement is attached to this Motion for the review and consideration by each Class Member, and the Motion provides an overview of the material terms of the Proposed Settlement;
- (4) The Court has previously certified the Class and Class Members were afforded an opportunity to request exclusion, with three such individuals doing so; and,
- (5) The Proposed Settlement requires court approval, and proposed Notice describes for each Class Member the right to object and the deadline for filing any such objections.

It appears the Rule 23 as adopted into FRBP 7023 is or will be complied with under the Settlement.

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5. Conclusion

Trustee and Plaintiff have persuasively argued that the *A&C Properties* factors favor granting the motion over Gladstone's opposition, as the Settlement Agreement appears to have been the result of arm's-length negotiations, is fair and equitable, is carefully considered and serves the best interests of the creditors. As a practical matter, the Trustee is doing what the court expects her to do, that is, keeping a close eye on the relative benefit of continued litigation considering the lack of available resources. This is particularly so in a borderline administratively insolvent case which this one appears likely to be. The proposed Settlement Agreement also appears to comply with the requirements of FRBP 7023, and for all these reasons should be approved.

Approve

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

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

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Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman
Todd C. Ringstad
Brett Ramsaur
Richard C Donahoo
Andrew Still

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8:20-10441 Scot Matteson

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**#9.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against an Individual
(cont'd from 8-11-20 per order approving sixth stip. to cont. status hrg entered 7-27-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR CASE DISMISSED 8-07-20**

Tentative Ruling:

Tentative for 3/10/20:

The timing in this case is muddled because two summons were issued and the deadline to respond to the reissued summons is after the hearing on the status conference in this case. It might be best to continue this status conference to March 17, 2020 at 10:00 a.m. so that the court can evaluate any response that is filed. If no response is received, the order for relief should be entered.

Party Information

Debtor(s):

Scot Matteson

Pro Se

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#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1606777829>

ZoomGov meeting number: 160 677 7829

Password: 914409

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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- NONE LISTED -

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

Wednesday, October 14, 2020

Hearing Room 5B

10:00 AM

8:20-12476 EDC, LLC

Chapter 11

#1.00 United States Trustee To Dismiss Case Or Convert Case To One Under Chapter 7 Pursuant To 11 USC Section 1112(b)

Docket 16

Tentative Ruling:

Tentative for 10/14/20:

Grant. Although there may have been a last minute attempt to come into compliance, this is too little too late in this single asset real estate case (see # 1.1).

Party Information

Debtor(s):

EDC, LLC

Represented By
Jay W Smith

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 14, 2020

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8:20-12476 EDC, LLC

Chapter 11

**#1.10 STATUS CONFERENCE Re: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 10-07-20)**

Docket 1

Tentative Ruling:

Tentative for 10/14/20:
No schedules? No report? See #1.

Tentative for 10/7/20:
Continue to coincide with UST motion to dismiss set for Oct. 14 @ 10:00 a.m.
Appearance is optional.

Party Information

Debtor(s):

EDC, LLC

Represented By
Jay W Smith

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, October 14, 2020

Hearing Room 5B

10:00 AM

8:12-10105 Walldesign, Inc., a subchapter S corporation

Chapter 11

#2.00 CONT Scheduling And Case Management Conference

[fr: 2/15/12, 4/25/12, 7/18/12, 9/26/12, 10/3/12, 12/12/12, 2/27/13, 3/20/13, 5/15/13, 6/26/13, 10/2/13, 11/20/13, 2/19/14, 5/14/14, 7/30/14, 11/19/14, 1/14/15, 3/18/15, 4/29/15, 9/16/15, 2/3/16, 5/25/16, 12/21/16, 6/28/17, 10/25/17, 4/25/18, 8/29/18, 1/23/19, 4/24/19, 7/31/19, 9/25/19, 10/9/19, 2/5/20, 6/24/20]

Docket 1

Tentative Ruling:

Tentative for 10/14/20:

A more recent post confirmation report would have been helpful. From the June report it would appear that litigation is ongoing?

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Walldesign, Inc., a subchapter S

Represented By
Marc J Winthrop

Movant(s):

Walldesign, Inc., a subchapter S

Represented By
Marc J Winthrop

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, October 14, 2020

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10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#3.00 STATUS CONFERENCE On Fee Award Issues Remanded By District Court

Docket 0

Tentative Ruling:

Tentative for 10/14/20:
Why no status report?

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
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Wednesday, October 14, 2020

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 9-02-20)**

Docket 1

Tentative Ruling:

Tentative for 10/14/20:
See #6.

Tentative for 9/2/20:
See #12.

Tentative for 8/5/20:
No tentative. See #4.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/27/20:
See #8 and 9.

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CONT... Rosemaria Geraldine Altieri

Chapter 11

Tentative for 4/8/20:
No status report filed? See #12 and #13. Continue to coincide with
confirmation hearing. Appearance is optional.

Tentative for 2/5/20:
Continue status conference. Continue approximately 60 days to allow
analysis of plan and disclosure statement due 2/28/20.

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.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#5.00 Motion to Use Cash Collateral
(cont'd from 9-02-20)**

Docket 5

Tentative Ruling:

Tentative for 10/14/20:
See #6.

Tentative for 9/2/20:
Continue on same terms and condition through October 14, 2020 to coincide
with confirmation hearing.

Tentative for 8/5/20:
This is an oft-continued request for use of cash collateral. As the court
recalls, there is only a very marginal slice of equity in the collateral. The court
has repeatedly stated (starting in November) that status quo cannot be
expected to last indefinitely, and the tentative from last time (5/27) said one
last extension would be granted. But the court observes now that somehow
confirmation of the plan has moved to September 2. The June MOR shows a
dwindling cash balance. To exacerbate the court's concern, no further status
report is offered, although Ms. Altieri does file a declaration suggesting that
everything is unfolding more or less as expected, with only a temporary lull in
rental payments due to the pandemic. Unless the secured creditor is willing to
go along further the court sees little encouragement on this record or reason
to continue the use beyond September 2. So, despite the court's earlier
admonition we should continue on the same basis until the continued
confirmation hearing, but further continuances of that date should not be
expected and, if sought, had better include the secured creditor's
acquiescence as it may be without further use of cash collateral. It probably
also goes without saying that the proposed plan should be the very best

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Chapter 11

possible as further time is not assured.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court’s website has been updated with this new information.

Tentative for 5/27/20:
see #9. Continue on same terms one final time.

Tentative for 4/8/20:
Continue on same terms pending confirmation hearing. Appearance is optional.

Tentative for 2/5/20:
Continue use on same terms pending continued status conference.

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?

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Chapter 11

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#6.00 Confirmation Of Chapter 11 Plan
(set from 4-08-20 discl stmt hrg)
(cont'd from 9-02-20 per order granting stipulated to cont. confirmation hrg
entered 8-12-20)**

Docket 66

Tentative Ruling:

Tentative for 10/14/20:

This is a hearing on confirmation on the debtor's Amended plan. This hearing was continued at least twice from May 27, 2020 to address some of the issues identified in the court's tentative ruling of that date, which tentative opinion is incorporated herein. The major remaining issues are cramdown interest rate and feasibility. The debtor has offered the expert opinion of J. Michael Issa, principal of the financial advisory firm, GlassRatner Advisory & Capital Group attached to his declaration of August 10, 2020.

The objecting creditor, judgment creditor Stephanie Bryson, Class 2E, has filed an opposing brief but no expert opinion. It is unclear whether U.S. Bank, Class 2B, who filed an objection to confirmation considered in the May 27 tentative, still opposes. The major obstacles to confirmation are considered below:

1. Cramdown Interest Rate

The court cannot confirm the plan over the objection of an impaired class of secured creditors, such as Bryson, unless the court determine under the relevant portion of §1129(b)(2)(A)(i) that the payments promised under the plan provide the present value of the secured claim. As both sides acknowledge, the present value analysis is the mirror image of interest rate.

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Chapter 11

So, the promised interest rate (in this case of 5% interest only over 180 monthly payments, or 15 years) leaves a balloon of \$330,386 due in full at the end of the plan term. The question is, adjusted for all *appropriate* market and risk factors, does this treatment amount to the present value of the claim, which appears to be the full \$330,386? The parties seem to agree with this court's conclusion expressed in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010), and as expressed in other authorities, that a plan may not by cramdown impose uncompensated risk on the objecting secured creditor. So, to determine the appropriate rate a variety of circumstances/factors must be evaluated. Among these are market interest rates adjusted for such factors as residential vs. commercial, inflationary pressures generally, terms of repayment and the like. To be clear, there is never a true "market" rate analysis because no lender will voluntarily make the proposed treatment as a new loan; if that were the case, one presumes the debtor would refinance. Instead, the court in cramdown analysis looks at all applicable factors to find as near a proxy as possible, one that appropriately reflects all the factors adjusted for circumstances.

One such factor here is that the proposed treatment of Class 2E is for interest only, with no amortization of principal at all. In some situations, this might be thought to be a factor somewhat lowering interest rates on shorter term loans where the principal is well protected. But in a situation like this one, where the "borrower" is a debtor in possession and proposes a long term plan (15 years), who apparently lacks the resources to amortize the principal at all, on balance the court regards this as a riskier proposition and a factor creating upward pressure on interest rates to compensate for that risk. See e.g. *In re McCombs Properties VIII*, 91 B.R. 907, 910-12 (Bankr. C.D. Ca. 1988). Neither side analyses this factor in any helpful way.

Mr. Issa opines that a *Till* approach, which takes a near riskless rate such as prime rate and then adds a few points as adjustments (in a vague, somewhat arbitrary and unexplained manner) is not appropriate for this case. The court agrees, not only because the *Till* court relied upon the prime rate,

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Chapter 11

which is not used in real estate loans, but also because that was a truck loan in a Chapter 13 of short duration. Therefore, the analysis appropriate to a longer-term real estate loan relies on fundamentally different analysis.

A closer line of authority is this court's opinion in *North Valley Mall*. In *North Valley Mall*, this court opined that a more principled approach was to break a proposed treatment as a "loan" analyzed in tranches, that is, a percentage of a 100% LTV loan can be thought of in at least three segments, or tranches, a percentage equating to more or less conforming loans, say up to 70% LTV, for which there is usually abundant data in the marketplace because real lenders make real loans on this basis every day. Sure, some adjustment is made for poor or no credit, or other factors such as conforming vs non-conforming, but there is still abundant data available. The trickier portions of the *North Valley* approach is fixing the second, or mezzanine tranche of say the next 20% of riskier "hard money" loans (usually in the range of 7 or 8%) combining to 90% LTV, and the very trickiest in the last 10% up to 100% of value, where no lender (outside maybe the Mafia) would touch the transaction on any basis. A suitable proxy in *North Valley* for that last tranche was said to be the average of what equity investors into highly leveraged transactions would expect as a return. This is usually quite a high number, say 20% per annum, as was the case in *North Valley Mall*. Then the court combines the tranches in weighted fashion to reach a blended rate for cramdown.

Bryson analyses the proposed rate using the *North Valley* approach, argues that 5% is therefore way too low and instead suggests the *North Valley* approach would yield a blended rate of 10.5%. Unfortunately, no expert is retained on behalf of Bryson. Mr. Issa does not utilize *North Valley* but adopts instead a "modified market rate" approach. Mr. Issa acknowledges that "an efficient market for traditional debt" does not exist for the Chandler property because there is, at best \$25,000 or so of value therein for the Bryson lien to attach to behind almost \$700,000 of senior debt. Thus, this property is well over 100% LTV and effectively yielding almost no collateral

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value at all (maybe 4% in Mr. Issa's view) after costs of sale. Mr. Issa correctly observes that no lender would touch this on any basis and even under a *North Valley* approach nothing but the very highest tranche (the so-called equity investor tranche) exists to add to the blended rate on a partially secured basis. He does opine, however, that "an efficient market likely does exist..." for the Bryson position on the Adams Street property which he observes attaches to about \$278,000 of value behind \$825,828 of senior debt. He calls this a 75% LTV situation, but the court is somewhat confused unless what he means is this is only compared to what the court in *North Valley* called mezzanine debt, i.e. effectively hard money loans into heavily mortgaged situations with correspondingly higher rates based on increased risk. He does seem to acknowledge that in any event the analog for market analysis has to be on 100% LTV situations for the combined loan structure, but since Bryson is in junior most position, the only apt comparison *for her position* is to the riskier portion of the mezzanine tranche or even to the leveraged equity positions only. In other words, the comparison is not like in *North Valley* to blended rates where a single loan is broken into tranches and then re-blended, *but instead only to the riskiest junior positions*.

Mr. Issa opines the appropriate rate is 7.1% for the Boston area "for this product." He cites in a footnote to an article by Eisfeldt and Demers from the National Bureau of Economics Research dated December 2015. Well, maybe, but the court would be very surprised to see that the conditions regarding that investment data are in any way comparable to those present in this case. To be comparable, the investments would have to have been into very highly leveraged situations, that is, where the "equity" investment is behind maybe 80% LTV of existing debt. The court does not doubt that some investors would venture into such situations but would be extremely surprised to see only a demand for 7.1% annualized return in comparable situations. Indeed, the court "googled" the Eisfeldt and Demers paper. It is 56 pages of somewhat dense and technical economic jargon. It looks to the court's reading that while at page 42 in a table there is reference to a 7.1% rate of return in the Boston area, insofar as the court can understand it, this

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represents an overall investment return rate into rental housing generally, not particularized so as to correspond to only highly leveraged investments such as pertains here. So, the court is left to doubt the "market rate" analysis at any level.

At pp. 8-9 of his report Mr. Issa does opine that an approach would be to blend a 3.22-3.95% rate pertaining to 75% LTV loans on investment properties generally with the 7.1%. But again, it is left very unclear that the 75% LTV rate is comparable to what we have in the case at bar. The comparison here is not to loans up to 75% of value, *but to hard money loans behind 75% existing debt* thus 100% LTV, a much riskier pool which assuredly commands a higher rate. So, the conclusion he reaches at page 9 of the report that on a blended basis the rate should be near 5% is very suspect. He does opine at pp. 10-11 that the court can reinforce the loan rate with a total debt to net income ratio in this case (\$151,536 combined income to total debt as called for in the plan of \$122,114) which he says is within the standard debt service coverage ratio of 1.22x, or within the "standard metric" of between 1.2 to 1.4% used in financing of income property [but see feasibility analysis *infra*]. But another unsupported assumption is utilized in attempting to reconcile the 7.1% equity investment rate and the 3.22-3.95% market rate for 75% LTV properties for a resulting average of about 5%; he simply averages the two rates together. (see footnote 11). He does not attempt to weight either result. No explanation is offered for this approach and, as the court observes, even the 7.1% rate is highly suspect since it is left unclear that such a number corresponds to investments in income properties in the Boston area generally, or more usefully to a particularized rate of investments into highly leveraged properties only. In sum, the opinion does not persuade the court that 5% is anywhere near the appropriate rate to yield "present value" even before one considers any further boost required to deal with the fact that the loan in question is non-amortizing, interest only.

2. Feasibility

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As Mr. Issa analyzed it, the income to debt ratio is 1.22x. But that assumption depends on getting a very low cramdown interest rate, such that the yearly debt service for the Bryson obligation is only \$16,519. But if the cramdown rate is more like 10% or about \$33,000 per annum the total debt service amounts to more like \$140,595, or in ratio terms 1.07x. Granted, this is still within (barely) the stated expected net income of \$151,536. But the proposal to not amortize the obligation at all creates a whole additional set of issues. If the obligation is fully amortized at 10% over 15 years, the payment jumps to \$3550 monthly or \$42,600 annually which bumps debt payments to almost exactly projected income. Who knows what markets will look like in 15 years, and no details are given that the court sees telling us just how debtor will be able to refinance the property when the balloon comes due? Also, debtor relies on various assumptions such as the bonus component of her income will remain steady at an average of \$12,000 per annum, or that repairs, and maintenance of the properties will remain manageable within existing budget.

3. Conclusion

The plan is not "fair and equitable" as pertains to the objecting creditor, Bryson, in that the cramdown interest rate of 5% fails to account properly for all risks and thus does not yield present value of the secured claim. The plan cannot be confirmed as written for that reason. Also, debtor bears the burden on proving not only that issue but the related issue of feasibility. On feasibility, if the interest rate is adjusted to give present value the resulting budget is extremely tight. The court is agnostic on the question of whether it is, nevertheless, sufficient since feasibility does not mean guaranteed performance, only more likely than not.

Deny. The court will hear argument as to where we should go from here.

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Chapter 11

Tentative for 5/27/20:

This is the hearing on confirmation of debtor's plan. It is opposed in objections filed by two creditors.

A. Bryson

The first objection comes from judgment creditor from Class 2E, Stephanie Bryson ("Bryson"). Bryson obtained a judgment against Debtor in the amount of \$270,658.85. Bryson has liens on two properties located in Massachusetts, the Chandler property and the Adams property. The Chandler property was valued at \$775,000 (though Bryson values it at \$795,000). The Adams property was valued at \$978,300 (Bryson values it at \$1,240,000).

The plan proposes to pay off debt of \$330,386.91 (as of 10/22/19) over a period of 180 months, with monthly "interest only" payments of \$1,376.61, then a balloon payment of \$330,386.91 at the end of the plan.

Bryson argues that the plan does not satisfy the best interest of creditors test. Bryson does not believe that the Debtor's liquidation analysis is accurate, due partly to the undervaluing of the encumbered properties. If Bryson's fair market valuations are used instead of Debtor's, then the result is a net positive instead of negative. Bryson concedes that after administrative costs were factored in a chapter 7 liquidation there would still be nothing left for unsecured creditors, whereas the current plan provides for at least some recovery for unsecured creditors. Despite this fact, Bryson argues that the plan still cannot be considered fair and equitable.

Specifically, Bryson argues that the 5% interest rate contemplated in the plan is not adequate to account for the risks involved. Bryson is not a lender and her Massachusetts judgment accrues interest at 12% per year. Bryson asserts that she could foreclose on the Massachusetts properties,

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which would pay the judgment debt in full. Bryson asserts that the plan also has feasibility issues, and the interest rate must be adjusted to account for that risk.

Bryson asserts that the plan relies on rental income from two properties in Massachusetts. Any unplanned or prolonged vacancy throws the plan into doubt. Furthermore, Bryson asserts that Debtor's financial history suggests that her projected income is optimistic to say the least. The properties are also old and may need repairs over the life of the plan. Those repairs could come at significant cost, which again, would jeopardize the plan. The supplement to the Bryson opposition states that Debtor is including a \$16,000 annual bonus from her employer, Clean Energy. However, it appears that the bonus will be in the form of stock, not cash. Thus, Bryson concludes that the plan is simply not feasible and should not be confirmed. Not raised by Bryson, but of concern to the court, is what happens at the end of 180 months on the balloon? One imagines that the debtor will either refinance or sell, but the prospect of so doing should at least be explained. Interest-only, non-amortizing lien treatments are inherently riskier than fully amortizing. This is because the creditor is never put in a position of comfort on its principal, but always hangs on the precipice. There may be a further complication here in that Massachusetts rate of interest on judgment liens is reported to be 12%, which means that the balance will actually increase over time, unless it is intended that the cramdown rate supplant the state judgment rate. That point needs clarification and briefing.

This is not inherently unconfirmable, but the fundamental precept is that the risks imposed must be fully paid. In the court's view, 5% is too low to accomplish "present value" under §1129(b)(2)(A) considering this point and that Bryson appears to be in second position, with little or no cushion. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Debtor argues for the prime plus approach found in *Till* and argues that *North Valley Mall* is distinguishable. But her argument is not convincing. What is the principled difference between a judgment lien and a defaulted loan? They are both

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'allowed secured claims' and that is what the Code requires be given present value if paid over time. Debtor confuses resort to market data to help analyze what is present value (an economic concept informed by data) with the fact that most data available happens to originate in the loan marketplace. That is because lenders consult varied data when deciding whether to extend credit, and many factors such as collateral value and creditworthiness go into the analysis. That is a process done before the fact. But that does not change the fact that both are secured claims being paid over time so their origin seems immaterial *after the fact* where the court in cramdown analysis is asked to make a determination of factors in situations where no real market exists. Even if the court could be persuaded that the *Till* approach (which was after all about a truck loan and seemingly even less relevant) were correct, a 1.75% adjustment is still way too low.

B. U.S. Bank National Association

The real property that is the subject of this Objection is located at 33 Chandler Street, Newton, MA 02458 (the "Property"). Creditor holds a security interest in the Property as evidenced by a Note and Mortgage executed by the Debtor. Said Note and Mortgage are attached to Creditor's proof of claim (the "Proof of Claim") which was filed in the instant case as Claim No. 5-1. The Proof of Claim provides for a secured claim in the amount of \$590,127.29. This amount has increased since the petition date as interest has accrued and Creditor has made post-petition escrow advances to protect its interest in the Property. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. Creditor's claim is treated in the Plan under Class "2B." The Plan provides that the Debtor will pay Creditor's claim the amount of \$590,127.29, over 360 months (30 years) at 4.625% interest, with equal monthly payments of \$3,034.08.

The Plan fails to provide for maintenance of property insurance and timely payment of property taxes. The Plan should specify whether Debtors

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intend to maintain property insurance and tax payments directly or through establishment of an escrow account with Creditor. Creditor has advanced approximately \$7,597.52 for post-petition property taxes on account of the Property. The Plan does not provide for reimbursing Creditor for such advances which were made post-petition for the benefit of the estate. Such advances qualify as administrative expenses and must be cured on or before the effective date of the plan.

The Plan indicates that the value of the Property is \$775,000.00. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. The plan provides for a total secured claim in the reduced amount of \$590,127.29. As the plan fails to provide for the full amount of Creditor's secured claim, Debtor's Plan cannot be confirmed as is, and the portion that is payable as an administrative claim must be dealt with.

C. Conclusion

The objections raise some good points regarding feasibility. According to Bryson, Debtor's own financial data demonstrate that she will not be able to make good on the plan payments. This plan appears to have a very (perhaps overly) optimistic outlook on Debtor's finances. Further, expenditures that may be necessary are not addressed at all, like insurance, maintenance, and the fact that there may be a \$7597.52 administrative claim.

Debtor points out that Bryson has not provided any analysis as to what the appropriate interest rate would be. Debtor also points out that under the plan, unsecured creditors get at least some recovery, whereas in a liquidation, they would receive nothing. While, of course, the court wants unsecured creditors to get something, this does not substitute for the fact that it is debtor's burden to prove not only feasibility, but that cramdown treatment is

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providing the present value of the objecting secured claims and that this plan is better than liquidation. This has not been done. Furthermore, Debtor asserts that the First Amended Plan provides that all secured creditors encumbering the Rental Properties will receive deferred cash payments totaling the allowed amount of their claims while retaining their liens on the Rental Properties. But this assertion is devoid of analysis and, on a true present value basis, probably wrong. As Debtor's plan seems to be premised on everything going as planned over the 15 (or even thirty) years of this Chapter 11 plan, with little or no wiggle room, and while not even apparently dealing with all likely expenses, the court requires Debtor to answer Bryson's concerns about feasibility. Given the current economic climate, Debtor should account for the realistic probability of sustained occupancy in the rental properties as well as her own employment prospects.

No tentative. Continue for approximately 30 days to afford one final opportunity to fill in the gaps.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

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

Wednesday, October 14, 2020

Hearing Room 5B

10:00 AM

CONT...

Rosemaria Geraldine Altieri

Chapter 11

The purpose of a disclosure statement is "to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan." Duff v. U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996). "Adequate information" is defined under 11 U.S.C. Sec. 1125(a)(1) as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interest of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan."

Bryson's objections notwithstanding (though feasibility seems questionable), the DS appears to provide adequate information. It is also worth noting that the DS has not drawn any other opposition. The plan may ultimately not be confirmable if feasibility proves too speculative, as it very well might be given the current economic climate, or if cramdown is attempted and the value of the rental properties is too low as Bryson has alleged, suggesting that creditors will do better in a liquidation (the so-called best interest of creditors test). Debtor will have the burden on these issues in order to achieve confirmation, but at this stage, the DS does not appear deficient from an *information* standpoint, especially with the detailed risk factors analysis.

Grant. Set confirmation date and deadlines.

Appearance is optional.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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

Wednesday, October 14, 2020

Hearing Room 5B

10:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1609015659>

ZoomGov meeting number: 160 901 5659

Password: 474683

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

CONT...

- NONE LISTED -

Chapter

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

8:12-10105 Walldesign, Inc., a subchapter S corporation

Chapter 11

Adv#: 8:13-01409 Official Committee of Unsecured Creditors of Walld v. Bello et al

#1.00 CONT STATUS CONFERENCE RE: Complaint on claims to set aside and recover fraudulent transfers; for recovery preference payments; for recovery of post-petition transfers; for recovery of illegal dividends; for breach of fiduciary duty; for disallowance of proofs of claim; and for equitable subordination of proofs of claim

[from: 3/6/14, 3/19/14, 4/17/14, 7/31/14, 10/16/14, 1/15/15, 4/16/15, 6/18/15, 8/27/15, 9/9/15, 10/29/15, 1/13/16, 4/25/16, 7/7/16, 9/15/16, 12/14/16, 4/12/17, 6/27/17, 9/26/17, 10/31/17, 12/5/17, 2/27/18, 5/8/18, 7/10/18, 10/23/18, 1/29/19, 2/26/19, 5/28/19, 10/22/19, 2/5/20, 6/24/20]

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
ADVERSARY PROCEEDING ENTERED 10-13-20**

Tentative Ruling:

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Walldesign, Inc., a subchapter S

Represented By

Marc J Winthrop

Jeannie Kim

Garrick A Hollander

Kavita Gupta

Jill M Holt Golubow

Leonard M Shulman

Peter W Lianides

Defendant(s):

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

CONT... Walldesign, Inc., a subchapter S corporation Chapter 11

DOES 1-50 Pro Se

Premier Trust, Inc., as trustee of the Pro Se

Premier Trust, Inc., as trustee of the Pro Se

Bello Construction Company, LLC Pro Se

MB Investment Group, LLC Pro Se

Imperial Building Group, Inc. Pro Se

Michael Bello, LLC Pro Se

RU Investments, LLC Pro Se

Josephine Bello Pro Se

Christopher J. Bello Pro Se

Stephen M. Bello Pro Se

Nancy Ann Bello as trustee of the Pro Se

Nancy Ann Bello Pro Se

Michael Ru Bello as trustee of the Pro Se

Michael Ru Bello Pro Se

Bello Family Vineyard, LLC Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jack A Reitman
John P Reitman

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

8:12-10105 Walldesign, Inc., a subchapter S corporation

Chapter 11

Adv#: 8:13-01418 Official Committee of Unsecured Creditors of Walld v. Scully Estates, LLC

#2.00 CONT STATUS CONFERENCE RE: Third Party Complaint

[fr: 6/18/15, 8/27/15, 10/29/15, 1/13/16, 2/24/16, 5/25/16, 8/3/16, 9/15/16, 12/14/16, 3/29/17, 6/21/17, 8/23/17, 11/22/17, 1/31/18, 3/28/18, 6/27/18, 9/26/18, 12/19/18, 4/23/19, 6/26/19, 7/24/19, 9/25/19, 1/29/20, 2/26/20, 4/29/20, 6/24/20]

Docket 1

Tentative Ruling:

Tentative for 10/15/20:

Plaintiff to submit a scheduling order:

Discovery cutoff January 2, 2021;

Last date for pretrial motions January 29, 2021;

Pretrial conference February 11, 2021 @ 10:00 a.m.

Pretrial stipulation due per LBRs.

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

3rd Party Defendant(s):

Irene S. Scully

Represented By
Mark S Horoupian

3rd Party Plaintiff(s):

Scully Estates, LLC dba Scully

Represented By
Mark S Horoupian

Debtor(s):

Walldesign, Inc., a subchapter S

Represented By

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

CONT... Walldesign, Inc., a subchapter S corporation

Chapter 11

Marc J Winthrop
Jeannie Kim
Garrick A Hollander
Kavita Gupta
Jill M Holt Golubow
Leonard M Shulman
Peter W Lianides
Robin E Paley

Defendant(s):

Scully Estates, LLC dba Scully

Represented By
Mark S Horoupian

Irene S. Scully

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jack A Reitman
John P Reitman

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

8:20-10045 Young Ha Kim

Chapter 7

Adv#: 8:20-01056 The Wheel and Tire Club, Inc. v. Kim

#3.00 **CONT STATUS CONFERENCE RE: Complaint for non-dischargeability of debt owed to the Wheel and Tire Club, Inc. dba Discounted Wheel Warehouse (case reassigned from Judge Catherine E. Bauer per admin order dated 7-15-20)**

[fr: 7/7/20]

Docket 1

Tentative Ruling:

Tentative for 10/15/20:

Deadline for completing discovery: January 29, 2021

Last date for filing pre-trial motions: February 12, 2021

Pre-trial conference on: March 25, 2021 @ 10:00 a.m.

Joint pre-trial order due per local rules.

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Young Ha Kim

Represented By
Christian T Kim

Defendant(s):

Young Ha Kim

Pro Se

Plaintiff(s):

The Wheel and Tire Club, Inc.

Represented By
Mark D Holmes

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

Thursday, October 15, 2020

Hearing Room 5B

10:00 AM

CONT... Young Ha Kim

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, October 15, 2020

Hearing Room 5B

10:00 AM

8:19-13493 Ralph Maxwell Burnett, III

Chapter 11

Adv#: 8:19-01230 Ross v. Burnett, III et al

#4.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt Under Sections 523(a)(2) and 523(a)(6) of the Bankruptcy Code (cont'd from 3-26-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION FOR DISMISSAL OF ENTIRE ACTION PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 7041 ENTERED 9-21-20**

Tentative Ruling:

Tentative for 3/26/20:

Deadline for completing discovery: August 31, 2020

Last date for filing pre-trial motions: September 21, 2020

Pre-trial conference on: October 15, 2020 at 10:00AM

Joint pre-trial order due per local rules.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Party Information

Debtor(s):

Ralph Maxwell Burnett III

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 15, 2020

Hearing Room 5B

10:00 AM

CONT... Ralph Maxwell Burnett, III

Chapter 11

Defendant(s):

Ralph Maxwell Burnett III Pro Se

Shelley Lynn Burnett Pro Se

Joint Debtor(s):

Shelley Lynn Burnett Represented By
Michael Jones
Sara Tidd

Plaintiff(s):

Richard Ross Represented By
Thomas J Polis

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

Thursday, October 15, 2020

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#5.00 Trustee's Motion to Approve Settlement and Subordination Agreement with Remares Global, LLC and Global Approach, LLC

Docket 177

Tentative Ruling:

Tentative for 10/15/20:

Grant. Movant to submit order. Appearance optional.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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**

Thursday, October 15, 2020

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Richard A Marshack, in his capacity as Chapter 7 T v. Rock Star Beverly

#6.00 Plaintiff's Motion For Default Judgment

Docket 47

Tentative Ruling:

Tentative for 10/15/20:
Grant. Appearance optional.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

Plaintiff(s):

Richard A Marshack, in his capacity

Represented By
D Edward Hays
Tinho Mang

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**

Thursday, October 15, 2020

Hearing Room 5B

2:00 PM

8:13-19732 Steven William Gentile

Chapter 11

**#7.00 Debtor's Emergency Motion To Disqualify Pistone Law Group LLP As Counsel
To Phillip J. Gentile, Sr., and Phillip J. Gentile, Jr.
(OST Signed 10-14-20)**

Docket 296

Tentative Ruling:

Tentative for 10/15/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

Steven William Gentile

Represented By
Michael G Spector
Vicki L Schenum
Rafael R Garcia-Salgado
Robert P Goe
Ronald S Hodges

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

Monday, October 19, 2020

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

**#1.00 TRIAL RE: Adversary Motion of Bankruptcy Fraud and Objection to Discharge By Creditor 1) 41: Objection/Recovery 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 Separation Obligation
(set from p/t hrg held from 3-26-20)
(cont'd from 7-28-20 per order granting mtn. to cont. trial entered 6-30-20)**

Docket 83

***** VACATED *** REASON: ORDER APPROVING STIPULATION TO CONTINUE TRIAL DATES DUE TO COVID-19 TO FEBRUARY 18, 2021 AND FEBRUARY 19, 2021 AT 10:00 A.M. ENTERED 10/6/2020**

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, October 20, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1613731663>

ZoomGov meeting number: 161 373 1663

Password: 428310

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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

Tuesday, October 20, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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

Tuesday, October 20, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

- NONE LISTED -

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

Tuesday, October 20, 2020

Hearing Room 5B

10:00 AM

8:18-13098 Amir Vafa Fakhri

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR**

Docket 32

Tentative Ruling:

Tentative for 10/20/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Amir Vafa Fakhri

Pro Se

Movant(s):

Deutsche Bank National Trust

Represented By
Rebecca L Wilson

Trustee(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 20, 2020

Hearing Room 5B

10:00 AM

8:18-13515 Alan Joseph Copeland and Judith Ann Copeland

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 9-22-20)

**FORETHOUGHT LIFE INSURANCE COMPANY
Vs
DEBTORS**

Docket 36

Tentative Ruling:

Tentative for 10/20/20:
Same as before. Appearance is optional.

Tentative for 9/22/20:
Grant absent stipulation to APO. Appearance is optional.

Party Information

Debtor(s):

Alan Joseph Copeland

Represented By
Steven A Alpert

Joint Debtor(s):

Judith Ann Copeland

Represented By
Steven A Alpert

Movant(s):

Forethought Life Insurance

Represented By
Daniel K Fujimoto

Trustee(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 20, 2020

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

- #3.00 TRIAL RE: Adversary Motion of Bankruptcy Fraud and Objection to Discharge By Creditor 1) 41: Objection/Recovery 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 Separation Obligation
(set as s/c held 8-2-18)
(set from p/t hrg held 3-26-20)
(cont'd from 7-29-20 per order granting mtg to cont. trial entered 6-30-20)**

Docket 83

***** VACATED *** REASON: ORDER APPROVING STIPULATION TO CONTINUE TRIAL DATES DUE TO COVID-19 TO FEBRUARY 18, 2021 AND FEBRUARY 19, 2021 AT 10:00 A.M. ENTERED 10/6/2020**

Tentative Ruling:

Tentative for 3/26/20:
Schedule trial date in approximately 60-90 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 11/14/19:
If no appearance, issue OSC re: dismissal for lack of prosecution.

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

Tuesday, October 20, 2020

Hearing Room 5B

10:00 AM

CONT... Stacey Lynn Schmidt

Chapter 7

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?

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.

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

Tuesday, October 20, 2020

Hearing Room 5B

10:00 AM

CONT... Stacey Lynn Schmidt

Chapter 7

Tentative for 11/2/17:
See #4. What is happening on February 1, 2018 at 11:00 am?

Tentative for 10/12/17:
Status conference continued to November 2, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Pro Se

Plaintiff(s):

Tracy M Marx

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room

5B

1:30 PM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1611301059>

ZoomGov meeting number: 161 130 1059

Password: 062102

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Wednesday, October 21, 2020

Hearing Room 5B

1:30 PM
CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
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- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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

Wednesday, October 21, 2020

Hearing Room 5B

1:30 PM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, October 21, 2020

Hearing Room 1675

1:30 PM

8:20-10483 Theresa Sanchez Tuckman

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 9-16-20)**

Docket 5

Tentative Ruling:

Tentative for 10/21/20:

Need an order regarding the sustained objection regarding mortgage arrearages. If there is a continuing discrepancy between what the filed proofs of claim say regarding tax and mortgage claims, it is incumbent upon debtor to obtain either amended claims or an order.

Tentative for 6/17/20:

It is difficult to determine current status. All plan payments must be current and missing documents provided. Regarding arrearages, was this in the nature of paying the mortgagee on account of taxes advanced on Debtor's behalf? If it was paid to OC taxes directly, this was improper, as it should have been dealt with under the plan. An amended claim should be obtained from the lender either by stipulation or plan objection. No tentative.

Party Information

Debtor(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Movant(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

1:30 PM

8:20-12166 Stephen F. Sturm

Chapter 13

#2.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 10/21/20:

The Equity 1 secured claim must be dealt with formally before a plan can be confirmed. The life estate reportedly owned by debtor must also be valued for "best interest" analysis as well. Appearance is required.

Party Information

Debtor(s):

Stephen F. Sturm

Represented By
Joseph A Weber

Movant(s):

Stephen F. Sturm

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 21, 2020

Hearing Room 5B

1:30 PM

8:20-12168 Joseph N. Zambrano

Chapter 13

#3.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph N. Zambrano

Represented By
Tina H Trinh

Movant(s):

Joseph N. Zambrano

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, October 21, 2020

Hearing Room 5B

1:30 PM

8:20-12214 Javier Antonio Sosa

Chapter 13

#4.00 Confirmation Of Chapter 13 Plan

Docket 10

Tentative Ruling:

Tentative for 10/21/20:

The proper amount of arrearages on the MAMAD claim must be given in the plan. Other deficiencies as noted by the trustee must also be met.

Appearance is required.

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

Trustee(s):

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 21, 2020

Hearing Room 5B

1:30 PM

8:20-12215 Haiede Ghorishi

Chapter 13

#5.00 Confirmation Of Chapter 13 Plan

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Haiede Ghorishi

Represented By
James D. Hornbuckle

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

1:30 PM

8:20-12244 Arturo A Mendoza Orozco

Chapter 13

#6.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

Tentative for 10/21/20:

Did the amended plan fix the Fast Auto Loan question? Appearance is optional.

Party Information

Debtor(s):

Arturo A Mendoza Orozco

Represented By
David R Chase

Movant(s):

Arturo A Mendoza Orozco

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, October 21, 2020

Hearing Room 5B

1:30 PM

8:20-12311 Almada Ginnia Tristan and Todd T. Tristan

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Almada Ginnia Tristan

Represented By
Andrew S Bisom

Joint Debtor(s):

Todd T. Tristan

Represented By
Andrew S Bisom

Trustee(s):

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 21, 2020

Hearing Room 5B

1:30 PM

8:20-12333 Joann Carolyn Stran

Chapter 13

#8.00 Conifrmaiton Of Chapter 13 Plan

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joann Carolyn Stran

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 21, 2020

Hearing Room 5B

1:30 PM

8:20-12350 Antonio Castillo and Maria De Jesus Castillo

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antonio Castillo

Represented By
Nicholas W Gebelt

Joint Debtor(s):

Maria De Jesus Castillo

Represented By
Nicholas W Gebelt

Movant(s):

Antonio Castillo

Represented By
Nicholas W Gebelt
Nicholas W Gebelt

Maria De Jesus Castillo

Represented By
Nicholas W Gebelt
Nicholas W Gebelt

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

1:30 PM

8:20-12416 Michele Lynn Stover

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 10/21/20:

Continue as needed to deal with items in the trustee's objection if payments are current. Appearance is required.

Party Information

Debtor(s):

Michele Lynn Stover

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 21, 2020

Hearing Room 5B

3:00 PM

8:15-14859 Christina Linda Staudinger

Chapter 13

#11.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 44

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
DISMISSAL OF MOTION RE: MOTION TO MODIFY OR SUSPEND
PLAN PAYMENTS FILED 9-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Linda Staudinger

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 21, 2020

Hearing Room 5B

3:00 PM

8:16-10050 Lawrence D. Cohn and Mary Ellen Cohn

Chapter 13

#12.00 Trustee's Notice Of Intent To Increase Dividend To Unsecured Creditors

Docket 131

Tentative Ruling:

Tentative for 10/21/20:

What is the status of the modification motion given trustee's conditional comments?

Party Information

Debtor(s):

Lawrence D. Cohn

Represented By
Elena Steers

Joint Debtor(s):

Mary Ellen Cohn

Represented By
Elena Steers

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:16-10620 Rosalie Abad Naval

Chapter 13

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

Docket 94

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Rosalie Abad Naval

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 21, 2020

Hearing Room 5B

3:00 PM

8:16-13810 Robert Lloyd Huotari

Chapter 13

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

Docket 37

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Robert Lloyd Huotari

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:16-14563 Sherri Lynn Spoor

Chapter 13

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

Docket 104

Tentative Ruling:

Tentative for 10/21/20:
Grant unless current. Appearance is optional.

Party Information

Debtor(s):

 Sherri Lynn Spoor

 Represented By
 Sunita N Sood

Trustee(s):

 Amrane (SA) Cohen (TR)

 Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:17-11771 Gerritt Dwayne Schuitema

Chapter 13

#16.00 Trustee's Motion to Dismiss Case For Failure To Make Plan Payments

Docket 131

Tentative Ruling:

Tentative for 10/21/20:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Gerritt Dwayne Schuitema

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room

5B

3:00 PM

8:17-12477 Geraldine Arguelles

Chapter 13

**#17.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)**

Docket 119

Tentative Ruling:

Tentative for 10/21/20:
Grant unless current.

Tentative for 9/16/20:
Grant unless current.

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:17-12922 Jaime Guerrero

Chapter 13

#18.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding (11 U.S.C. - 1307(c))
(con't from 9-16-20)

Docket 78

Tentative Ruling:

Tentative for 10/21/20:

Is this resolved by modification motion? Appearance is optional.

Tentative for 9/16/20:

Grant unless current or modification motion on file.

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, October 21, 2020

Hearing Room 5B

3:00 PM

8:17-14481 Laurie Patricia Mammolite

Chapter 13

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

Docket 42

Tentative Ruling:

Tentative for 10/21/20:
Grant unless current. Appearance is optional.

Party Information

Debtor(s):

Laurie Patricia Mammolite

Represented By
Raymond Perez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

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

Docket 100

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:17-14950 Kellie J Richardson-Ford

Chapter 13

#21.00 Verified Trustee's Motion For Order Dismissing Chapter 13 Proceeding Case For FailureTo Make Plan Payment

Docket 64

Tentative Ruling:

Tentative for 10/21/20:

Deny if Trustee confirms current. Appearance is optional.

Party Information

Debtor(s):

Kellie J Richardson-Ford

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, October 21, 2020

Hearing Room 5B

3:00 PM

8:18-10793 Angela A. Mafioli

Chapter 13

**#22.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)**

Docket 50

Tentative Ruling:

Tentative for 10/21/20:

Does recent modification order cure this? Appearance is optional.

Tentative for 9/16/20:

Modification approved but lacking an order?

Party Information

Debtor(s):

Angela A. Mafioli

Represented By

Nathan Berneman

Nathan A Berneman

Trustee(s):

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 21, 2020

Hearing Room

5B

3:00 PM

8:18-11129 Elvin Lorenzana and Somer Asako Shimada

Chapter 13

**#23.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 9-16-20)**

Docket 75

Tentative Ruling:

Tentative for 10/21/20:
Did modification cure this? Appearance is optional.

Tentative for 9/16/20:
Grant unless current or modification motion on file

Party Information

Debtor(s):

Elvin Lorenzana

Represented By
Anerio V Altman

Joint Debtor(s):

Somer Asako Shimada

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 21, 2020

Hearing Room 5B

3:00 PM

8:18-11141 Max L. Cunningham and Lori F. Cunningham

Chapter 13

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

Docket 61

Tentative Ruling:

Tentative for 10/21/20:

Grant unless modification motion on file. Appearance is optional.

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, October 21, 2020

Hearing Room 5B

3:00 PM

8:18-11474 Brian G. Corntassel

Chapter 13

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

Docket 87

Tentative Ruling:

Tentative for 10/21/20:

Grant unless motion to modify on file. Appearance is optional.

Party Information

Debtor(s):

Brian G. Corntassel

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, October 21, 2020

Hearing Room

5B

3:00 PM

8:18-12742 Kathleen Abbey Youngsma

Chapter 13

**#26.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 9-16-20)**

Docket 44

Tentative Ruling:

Tentative for 10/21/20:
Did modification of 9/25 cure this? Appearance is optional.

Tentative for 9/16/20:
Grant unless current or modification on file.

Party Information

Debtor(s):

Kathleen Abbey Youngsma

Represented By
John D Sarai

Trustee(s):

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 21, 2020

Hearing Room 5B

3:00 PM

8:18-13016 Philip Q Dowsing

Chapter 13

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

Docket 45

Tentative Ruling:

Tentative for 10/21/20:
Grant unless current. Appearance is optional.

Party Information

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, October 21, 2020

Hearing Room

5B

3:00 PM

8:18-13237 William Rafael Castro and Marylyn Helen McCormack De

Chapter 13

**#28.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)**

Docket 76

Tentative Ruling:

Tentative for 10/21/20:

Did 10/1 modification cure this? Appearance is optional.

Tentative for 9/16/20:

Grant unless current or modification on file.

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, October 21, 2020

Hearing Room 5B

3:00 PM

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

Chapter 13

#29.00 Debtor's Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments

Docket 78

Tentative Ruling:

Tentative for 10/21/20:

Debtor must respond to trustee's comments. Appearance is optional.

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 21, 2020

Hearing Room 5B

3:00 PM

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

Chapter 13

**#30.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)**

Docket 65

Tentative Ruling:

Tentative for 10/21/20:

Debtor must either be current or must be responsive to the trustee's comments on the modification motion (see #29). Appearance is required.

Tentative for 9/16/20:

Continue to coincide with modification motion 10/21.

Tentative for 8/19/20:

Grant unless current or modification motion on file.

Tentative for 7/15/20:

Same. Appearance is optional.

Tentative for 6/17/20:

Grant unless completely current. Appearance is optional.

Tentative for 4/15/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

CONT... Chales Drew Simpson and June P Simpson

Chapter 13

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 21, 2020

Hearing Room 5B

3:00 PM

8:18-13646 Denyse Marie Kielb

Chapter 13

#31.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 73

Tentative Ruling:

Tentative for 10/21/20:
does order entered 9/23 cure the issue? Appearance is optional.

Party Information

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, October 21, 2020

Hearing Room 5B

3:00 PM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

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

Docket 78

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

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, October 21, 2020

Hearing Room

5B

3:00 PM

8:18-14633 Leeanne Dawn Marquez

Chapter 13

**#33.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)**

Docket 37

Tentative Ruling:

Tentative for 10/21/20:
Grant unless current. Appearance is optional.

Tentative for 9/16/20:
Grant unless current or modification motion on file.

Party Information

Debtor(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, October 21, 2020

Hearing Room 5B

3:00 PM

8:19-10832 Luke Shane Wendel

Chapter 13

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

Docket 45

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

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, October 21, 2020

Hearing Room 5B

3:00 PM

8:19-11082 Juan Melendez and Susana Melendez

Chapter 13

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

Docket 51

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Juan Melendez

Represented By
Sundee M Teeple

Joint Debtor(s):

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, October 21, 2020

Hearing Room

5B

3:00 PM

8:19-11475 Donald A. Shorman, Jr. and Lorraine D. Shorman

Chapter 13

**#36.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 9-16-20)**

Docket 35

Tentative Ruling:

Tentative for 10/21/20:

Did modification by order 10/05/20 fix this? Appearance is optional.

Tentative for 9/16/20:

Grant unless current or modification motion on file.

Party Information

Debtor(s):

Donald A. Shorman Jr.

Represented By
Tina H Trinh

Joint Debtor(s):

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, October 21, 2020

Hearing Room

5B

3:00 PM

8:19-11810 Helen Ojeda

Chapter 13

#37.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)

Docket 40

Tentative Ruling:

Tentative for 10/21/20:

Did modification by order 10/13 fix this? Appearance is optional.

Tentative for 9/16/20:

Grant unless current or modification motion on file.

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, October 21, 2020

Hearing Room 5B

3:00 PM

8:19-12157 Harmony Catrina Alves

Chapter 13

#38.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 46

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(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 21, 2020

Hearing Room 5B

3:00 PM

8:19-12603 David Bergman and Anne Bergman

Chapter 13

**#39.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)**

Docket 64

Tentative Ruling:

Tentative for 10/21/20:
Did modification ordered 9/24 fix this? Appearance is optional.

Tentative for 9/16/20:
Grant unless current.

Party Information

Debtor(s):

David Bergman

Represented By
Gary Polston

Joint Debtor(s):

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, October 21, 2020

Hearing Room

5B

3:00 PM

8:19-12629 Eduardo Meza

Chapter 13

**#40.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments
(cont'd from 9-16-20)**

Docket 91

Tentative Ruling:

Tentative for 10/21/20:
Did modification of 10/8 fix this? Appearance is optional.

Tentative for 9/16/20:
Grant unless current or modification motion on file.

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
Courtroom 5B Calendar**

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

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

Docket 68

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(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 21, 2020

Hearing Room 5B

3:00 PM

8:19-13020 Patricia Bullock

Chapter 13

**#42.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 9-16-20)**

Docket 121

Tentative Ruling:

Tentative for 10/21/20:
Did modification order 10/13 fix this? Appearance is optional.

Tentative for 9/16/20:
Grant unless current or modification motion on file.

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
Courtroom 5B Calendar**

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:19-13917 Hector Aguiluz Pineda

Chapter 13

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

Docket 45

Tentative Ruling:

Tentative for 10/21/20:

Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Hector Aguiluz Pineda

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 21, 2020

Hearing Room

5B

3:00 PM

8:20-10483 Theresa Sanchez Tuckman

Chapter 13

**#44.00 Debtor's Objection To Proof of Claim #5-1 Filed By The County Of Orange
(cont'd from 9-16-20)**

Docket 27

Tentative Ruling:

Tentative for 10/21/20:
Sustain. Appearance optional.

Tentative for 9/16/20:
Sustain.

Party Information

Debtor(s):

Theresa Sanchez Tuckman

Represented By
Isaac Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, October 21, 2020

Hearing Room 5B

3:00 PM

8:18-13419 Diane Weinsheimer

Chapter 13

#45.00 Amended Motion (related document(s): 114 Motion for Authority to Distribute Funds
(cont'd from 9-16-20)

Docket 115

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION ENTERED 10-21-20**

Tentative Ruling:

Tentative for 10/21/20:
Grant. Appearance is optional.

Tentative for 9/16/20:
No tentative.

Party Information

Debtor(s):

Diane Weinsheimer Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

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

Thursday, October 22, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1600049289>

ZoomGov meeting number: 160 004 9289

Password: 216396

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Thursday, October 22, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
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- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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

Thursday, October 22, 2020

Hearing Room 5B

10:00 AM

8:19-12736 Christina Stolze Lopez

Chapter 7

Adv#: 8:20-01114 Kosmala v. Lopez

#1.00 STATUS CONFERENCE RE: Complaint For Judgment: (1) Avoiding Fraudulent Transfer Pursuant To 11 U.S.C. § 548(A)(1)(A); (2) Avoiding Fraudulent Transfer Pursuant To 11 U.S.C. § 548(A)(1)(B); (3) Recovery Of Fraudulent Transfer Pursuant To 11 U.S.C. § 550; (4) Preserving Fraudulent Transfer Pursuant To 11 U.S.C. § 551; (5) For Imposition Of Resulting Trust; (6) For Declaratory Relief; (7) Turnover Of Property Of The Estate Pursuant To 11 U.S.C. § 542(A); And (8) For Authorization To Sell Real Property In Which Co-Owner Holds Interest Pursuant To 11 U.S.C. § 363(H)

Docket 1

***** VACATED *** REASON: STATUS CONTINUED TO 10/29/20 AT 10:00 A.M. PER ANOTHER SUMMONS ISSUED ON 8/5/2020.**

Party Information

Debtor(s):

Christina Stolze Lopez

Represented By
Timothy McFarlin

Defendant(s):

Dario Lopez

Pro Se

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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

Thursday, October 22, 2020

Hearing Room 5B

11:00 AM

8:18-14436 Juan Jesus Rojas de Borbon

Chapter 11

**#2.00 Post-Confirmation Status Conference Re: Chapter 11 Plan
(set from confirmation hrg. held 4-29-20)**

Docket 87

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**

Tuesday, October 27, 2020

Hearing Room 5B

10:30 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1616861942>

ZoomGov meeting number: 161 686 1942

Password: 394573

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Tuesday, October 27, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
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- Say your name every time you speak.
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, October 27, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Tuesday, October 27, 2020

Hearing Room 5B

10:30 AM

8:16-13829 Diana Solis

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 72

Tentative Ruling:

Tentative for 10/27/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Diana Solis

Represented By
Bryn C Deb

Movant(s):

U.S. Bank National Association, as

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, October 27, 2020

Hearing Room 5B

10:30 AM

8:18-13486 Jesus Gabriel Vargas

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 9-22-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR**

Docket 65

Tentative Ruling:

Tentative for 10/27/20:
Same tentative as before, grant absent APO. Appearance is optional.

Tentative for 9/22/20:
Grant absent stipulation to APO. Appearance is optional.

Tentative for 8/18/20:
Status? Grant absent APO. Appearance is optional.

Tentative for 7/14/20:
Grant absent APO stipulation or loan current post confirmation.

Party Information

Debtor(s):

Jesus Gabriel Vargas

Represented By
Lisa F Collins-Williams

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

Tuesday, October 27, 2020

Hearing Room 5B

10:30 AM

CONT... Jesus Gabriel Vargas

Chapter 13

Movant(s):

U.S. Bank National Association, not

Represented By
Sean C Ferry
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, October 27, 2020

Hearing Room

5B

10:30 AM

8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson

Chapter 13

#3.00 Motion for Adequate Protection , or in the Alternative, Relief from Automatic Stay
(cont'd from 9-22-20)

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTORS**

Docket 52

Tentative Ruling:

Tentative for 10/27/20:
Same tentative as before, grant absent APO. Appearance is optional.

Tentative for 9/22/20:
Grant absent APO. Appearance is optional.

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):

Deutsche Bank National Trust

Represented By
Merdaud Jafarnia
Nancy L Lee

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

Tuesday, October 27, 2020

Hearing Room 5B

10:30 AM

CONT... Manuel Rex Alarcon and Nancy Louise Richardson

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, October 27, 2020

Hearing Room 5B

11:00 AM

8:12-13407 Joel David Kent and Jennifer Dawn Kent

Chapter 7

#4.00 Motion To Avoid Judicial Lien with FW CA-Brea Marketplace, LLC

Docket 21

Tentative Ruling:

Tentative for 10/27/20:
Grant, appearance optional.

Party Information

Debtor(s):

Joel David Kent

Represented By
Nathan Fransen

Joint Debtor(s):

Jennifer Dawn Kent

Represented By
Nathan Fransen

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 27, 2020

Hearing Room 5B

11:00 AM

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

Chapter 7

#5.00 Fifth Omnibus Objection to Secured Gift Card/Store Credit Claims:

Claims Subject to Objection:

Claim No. 53	Ghadeer Abdel-Aziz
Claim No. 91	Lillian Aldapa
Claim No. 92	Carol Ann White
Claim No. 394	Pamela Slaughter
Claim No. 411	Yu Chen Tseng
Claim No. 484	Maria Hernandez
Claim No. 510	Grace Cho
Claim No. 662	Eloise Collins-Latham
Claim No. 691	Myrna Ruiz
Claim No. 731	Nathan Brooks
Claim No. 733	Annie P. Stanley
Claim No. 761	Delores M. Davis
Claim No. 789	Melissa Huff-Hill
Claim No. 800	Katy Wimer
Claim No. 1367	Olivia Aguinaga

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

Tuesday, October 27, 2020

Hearing Room

5B

11:00 AM

CONT...

**Anna's Linens, Inc.
Claim No. 1370**

Iris Ferrier

Chapter 7

Claim No. 1373

Brahim Franklin

Claim No. 1421

Ariceldy Vargas

Claim No. 1438

Donze Wilkins

Docket 2812

Tentative Ruling:

Tentative for 10/27/20:
Sustain, allow as 11 U.S.C. section 507(a)(7).

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

Trustee(s):

Karen S Naylor (TR)

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

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

Tuesday, October 27, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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, October 27, 2020

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#6.00 Trustee's Motion For Order: Authorizing Sale Of Litigation Rights (A) Outside The Ordinary Course Of Business; (B) Free And Clear Of Liens; (C) Subject To Overbids; And (D) For Determination Of Good Faith Purchaser Under Section 363(M)
(cont'd from 9-22-20)

Docket 117

*** VACATED *** REASON: CONTINUED TO DECEMBER 1, 2020 AT
11:00 A.M. PER ORDER ENTERED 10/1/2020

Tentative Ruling:

Tentative for 9/22/20:

The court had two concerns regarding this motion: (1) what is that is proposed to be sold, precisely described?, and (2) if the assets sold include trustee's avoidance powers under §§544,547,548 or 549, would the buyer have standing to pursue the actions post sale? On the second question there seems to be adequate authority in the Ninth Circuit supporting a conclusion that prudential standing would exist since, indisputably, creditors do benefit from the price, although the issue could have been more clear had there been a promised "rebate" of some portion of any proceeds to ensure that creditors got paid in full if, after administrative claims, the price is not sufficient to take out all unsecured claims. *See Brookview Apts., LLC v. Hoer (In re Weigh)*, 576 B.R. 189, 205-06 (Bankr. C.D. Cal. 2017) citing *Duckor Spradling & Metzger v. Baum (In re P.R.T. C. Inc.)*, 177 F.3d 774, 780-82 (9th Cir. 1999). But the first question remains. The description is vague in that inclusion of all rights of action, including trustee avoidance actions, is only one possible interpretation. From what is outlined in the motion it looks like the proposed actions would be in the nature of avoiding certain transactions as fraudulent conveyances, and possibly another as a post-petition transfer (honoring of a check post-petition), but the language used in the motion is susceptible to interpretation. The court will hear argument but is inclined to continue for clarification on this point, and possible re-noticing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By

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

Tuesday, October 27, 2020

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Matthew C Mullhofer

Chapter 7

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, October 27, 2020

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#7.00 Debtor's Motion to Convert Case From Chapter 7 to 11.
(cont'd from 9-22-20)

Docket 122

***** VACATED *** REASON: CONTINUED TO DECEMBER 1, 2020 AT
11:00 A.M. PER ORDER ENTERED 10/1/2020**

Tentative Ruling:

Tentative for 9/22/20:

The problem with this motion is that it is completely unsupported by any evidence. At most the declarations attest to a desire to explore a Chapter 11 plan but absolutely no details are given as to how that might be accomplished. It is also obvious that the conversion attempt is connected to the Trustee's motion to sell assets (see #12), so it would appear that the real motivation for this conversion attempt is to frustrate/block the Trustee's sale motion or other efforts to liquidate. While the court always prefers the good faith attempts of debtors to reorganize, this should not be mistaken for naivete. The Marrama case makes abundantly clear that good faith is a necessary prerequisite to conversion into a reorganization chapter. Such inquiry is heightened when it looks like a ploy to evade the trustee. Debtor might have made a closer case if she had given even the most basic explanation of just how she would manage this reorganization at this late date, and no idle promise of 120%+ or other of the moon and stars can convince under these circumstances, where concrete facts are what is needed.

Deny.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer
Michael Jones

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**

Tuesday, October 27, 2020

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Anerio V Altman

Chapter 7

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

Wednesday, October 28, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1600276623>

ZoomGov meeting number: 160 027 6623

Password: 054735

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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

Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

CONT...

- NONE LISTED -

Chapter

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

Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:19-11575 Brent M Giddens

Chapter 11

#1.00 United States Trustee Motion To Dismiss Case Pursuant To 11 U.S.C. § 1112(B)

Docket 105

Tentative Ruling:

Tentative for 10/28/20:

This appears to be a very challenging case, but debtor has not only failed to file a plan by the deadline, but he shows little else by way of determination to meet the challenge, such as staying current on MORs. Moreover, the most recently filed reports show no accumulation of cash which will certainly be necessary to meet §1129(a)(9)(C). This case has all the signs of going nowhere so the court is inclined to GRANT the motion, but will not decline a short continuance if the UST is convinced there is a purpose to be served.

Party Information

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, October 28, 2020

Hearing Room 5B

10:00 AM

8:19-11575 Brent M Giddens

Chapter 11

#2.00 EVIDENTIARY HEARING RE: Motion For Order Determining Value Of Collateral
(set from mtn hrg held on 7-22-20)
(set from s/c hrg held on 9-30-20)

Docket 92

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION BETWEEN THE DEBTOR AND THE UNITED STATES OF AMERICA RESOLVING DEBTOR'S MOTION FOR ORDER DETERMINING VALUE OF COLLATERAL ENTERED 10-22-20**

Tentative Ruling:

Tentative for 9/30/20:

Continue to October 28 @ 10:00. Appraisals to be exchanged within seven days and briefs from both sides (with appraisals as exhibits) to be filed not later than October 13, with sur replies, if any, not later than October 23. Counsel should address whether live testimony via Zoom or possibly in person, will be required.

Tentative for 7/22/20:

Debtor acknowledges he bears the burden of proof in this valuation motion under §506. He offers only his own declaration, which, although not entirely inadmissible as an owner, suffers from several problems such as the obvious self-interest as well as reductions dependent on expertise that the declarant does not evidentially possess (i.e. structural repairs, opinion on which side of the street is more valuable and the appropriate amount of reduction, even if true, etc.). Consequently, that burden is not carried. The IRS similarly offers declarations based on hearsay reports of computerized databases such as Zillow, or upon the county assessor, which is/are a notoriously inaccurate basis of current value. Moreover, the range of values, \$900,000 to \$1.3 million is significant and where the value falls may be quite significant (strategic) in determining treatment of junior liens. Consequently, the court cannot render an informed judgment on this record. Absent an agreed single appraiser, each side will be required to submit his/its own professional

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

CONT... **Brent M Giddens**

Chapter 11

appraisal of the subject property. These are to be filed at least two weeks before the hearing. Depending on range of resulting values, there may be a further requirement of an evidentiary hearing. *Continue.*

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Brent M Giddens

Represented By
Andrew P Altholz

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:13-19732 Steven William Gentile

Chapter 11

#3.00 STATUS CONFERENCE/PRE-TRIAL CONFERENCE RE: Order To Show Cause Why Sanctions Should Not Be Issued Pursuant To 11 USC Section 105 And 524

Docket 0

Tentative Ruling:

Tentative for 10/28/20:
Continue in favor of mediation?

Party Information

Debtor(s):

Steven William Gentile

Represented By
Michael G Spector
Vicki L Schennum
Rafael R Garcia-Salgado
Robert P Goe

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:13-19732 Steven William Gentile

Chapter 11

**#3.10 Debtor's Emergency Motion To Disqualify Pistone Law Group LLP As Counsel To Phillip J. Gentile, Sr., and Phillip J. Gentile, Jr.
(OST Signed 10-14-20)
(cont'd from 10-15-20)**

Docket 296

***** VACATED *** REASON: OFF CALENDAR - ORDER ENTERED 10-27-20**

Tentative Ruling:

Tentative for 10/15/20:
Per OST, opposition due at hearing.

Party Information

Debtor(s):

Steven William Gentile

Represented By
Michael G Spector
Vicki L Schenum
Rafael R Garcia-Salgado
Robert P Goe
Ronald S Hodges

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

Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 7-22-20)**

Docket 1

Tentative Ruling:

Tentative for 10/28/20:
Continue to January 27, 2021 @10 a.m. Appearance: optional.

Tentative for 7/22/20:
Deadline for filing plan and disclosure , 4 months from petition as debtor requests. Claims bar order 60 days after notice. Appearance is optional.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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

Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

**#5.00 Debtor's Emergency Motion for Order Authorizing: 1. Use of Cash Collateral On An Interim Basis; and 2. Setting Final Hearing On Use of Cash Collateral
(OST Signed 6-05-20)
(cont'd from 7-22-20)**

Docket 6

Tentative Ruling:

Tentative for 10/28/20:
Authorized same terms and conditions through January, 2021.

Tentative for 7/22/20:
The court is aware of the stipulation filed 7/21. However, the court notes that the June MOR projects negative cash flow for the second straight month. Should the court be worried?

Tentative for 6/10/20:
Per order, opposition due at hearing.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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Santa Ana
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Wednesday, October 28, 2020

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10:00 AM

CONT... AEPC Group, LLC

Chapter 11

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#6.00 Motion of Debtor-in-Possession to Reject Commercial Real Property Lease
[1890 W. Oak Parkway, Suite 250, Marietta, Georgia]

Docket 86

Tentative Ruling:

Tentative for 10/28/20:
Authorize rejection. Appearance: optional.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

Movant(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
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Santa Ana
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#7.00 Motion to Abandon Estate Property

Docket 87

Tentative Ruling:

Tentative for 10/28/20:
Authorize rejection. Appearance: optional

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

Movant(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:14-12267 Satinder Mohan Uppal

Chapter 11

#8.00 Motion For Entry Of Discharge After Completion Of Plan Obligations

Docket 201

Tentative Ruling:

Tentative for 10/28/20:
Grant.

Party Information

Debtor(s):

Satinder Mohan Uppal

Represented By
Michael G Spector
Vicki L Schennum
Michael G Spector
T Randolph Catanese

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:17-10327 Brian Floyd

Chapter 13

**#8.10 Debtor's Motion For Authority To Sell Real Property
(OST Signed 10-21-20)**

Docket 49

Tentative Ruling:

Tentative for 10/28/20:
Opposition, if any, due at hearing.

Party Information

Debtor(s):

Brian Floyd

Represented By
Yelena Gurevich

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:20-11154 1141 South Taylor Avenue, LLC

Chapter 11

#9.00 Motion Of Debtor To Voluntarily Dismiss Chapter 11 Proceeding Pursuant To 11 USC Section 1112(b) And FRBP Section 1017 And 9014 Memorandum of Points And Authorities

Docket 56

Tentative Ruling:

Tentative for 10/28/20:
Grant. Appearance optional.

Party Information

Debtor(s):

1141 South Taylor Avenue, LLC

Represented By
Michael R Totaro

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Wednesday, October 28, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#10.00 Application for Payment of: Interim Fees and/or Expenses

JENNIFER M. LIU, ACCOUNTANT FOR DEBTOR

Docket 142

Tentative Ruling:

Tentative for 10/28/20:
Grant. Order should include client non-opposition per LBRs. Appearance optional.

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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Wednesday, October 28, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#11.00 First Interim Application for Compensation and Reimbursement of Expenses for Period: 1/14/2020 to 7/31/2020:
(cont'd from 9-30-20 per order on stip. to cont. hrgs on interim fee applications entered 9-17-20)

Pachulski Stang Ziehl & Jones LLP, General Bankruptcy Counsel for the Debtor and Debtor in Possession

Fee: \$878,262.25

Expenses: \$27,409.16

Docket 279

Tentative Ruling:

Tentative for 10/28/20:
Grant, but with the \$60,000 reduction as agreed in the stipulation with the U.S. Trustee. Appearance optional.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
Central District of California
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Wednesday, October 28, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#12.00 First Interim Application for Compensation and Reimbursement of Expenses for the Period: 1/14/2020 to 8/31/2020:
(cont'd from 9-30-20 per order stip. to cont. hrgs on interim fee applications entered 9-17-20)

Greines, Martin, Stein & Richland LLP as Appellate Counsel for the Debtor and Debtor in Possession

FEE: \$34,430.00

EXPENSES: \$86.75

Docket 280

Tentative Ruling:

Tentative for 10/28/20:
Grant. Appearance optional.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
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Wednesday, October 28, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#13.00 First Interim Application for Compensation and Reimbursement of Expenses
for Period: 1/14/2020 to 7/31/2020:
**(cont'd from 9-30-20 per order stip. to cont. hrgs on interim fee
applications entered 9-17-20)**

**GlassRatner Advisory & Capital Group, LLC as Financial Advisor for the
Debtor and Debtor in Possession**

FEE: \$197,023.00

EXPENSES: \$554.73

Docket 281

Tentative Ruling:

Tentative for 10/28/20:
Grant. Appearance optional.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, October 28, 2020

Hearing Room

5B

10:00 AM

8:20-10143 **Bridgemark Corporation**

Chapter 11

#14.00 First Interim Application for Compensation and Reimbursement of Expenses
for Period: 4/6/2020 to 7/31/2020, Fee: \$72,762.00
**(cont'd from 9-30-20 per order stip. to cont. hrgs on interim fee
applications entered 9-17-20)**

**Casso & Sparks, LLP as Special Oil & Gas Counsel for the Debtor and
Debtor in Possession**

FEE: \$72,762.00

EXPENSES: \$162.25

Docket 282

Tentative Ruling:

Tentative for 10/28/20:
Grant. Appearance optional.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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Wednesday, October 28, 2020

Hearing Room

5B

10:00 AM

8:18-14436 Juan Jesus Rojas de Borbon

Chapter 11

**#15.00 Post-Confirmation Status Conference Re: Chapter 11 Plan
(set from confirmation hrg. held 4-29-20)
(re-scheduled from 10-22-20)**

Docket 87

Tentative Ruling:

Tentative for 10/28/20:

Does debtor anticipate administrative closing with reopening to coincide with eligibility for discharge?

Appearance: optional

Tentative for 4/29/20:

This plan is likely confirmable. Debtor notes that the absolute priority mle likely finds unusual cation here: mainly due to the fact that there is no dissenting class of unsecured creditors. Is this true as to Class 2A, which did not vote? Thus, Debtor concludes that the absolute priority rule is probably inapplicable in the usual sense. Instead: Debtor asserts that he will be providing "new value" in the amount of \$5,000. By ddng so, Debtor argues, the present equity owner may fully retain his equity interests in the reorganized debtor even though there is no real "dissenting class" to accommodate. (See Debtor's confirmation brief at pp. 24-26).

Although Debtor' s plan is likely confirmable, it must be amended to take out subsection (D) from section III of the plan. This subsection, entitled "Termination of Obligations In The Event of Unprocessed Payments" states:

"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; c) any payment which is not negotiated

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Wednesday, October 28, 2020

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10:00 AM

CONT... Juan Jesus Rojas de Borbon

Chapter 11

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." (Plan: pp. 18-19)

This provision has created problems when it has surfaced in other cases. Debtor's counsel should be reminded that such a provision has previously been found to be offensive to equity (as counsel should remember). As such, the plan is likely confirmable once this provision is removed.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 2/26/20:

Assuming an amendment providing a timeline for when the bankruptcy court in Kentucky might approve his employment, the D.S. may be distributed and a confirmation date set.

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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10:00 AM

CONT... Juan Jesus Rojas de Borbon

Chapter 11

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
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Judge Theodor Albert, Presiding
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Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1618967081>

ZoomGov meeting number: 161 896 7081

Password: 168550

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
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Thursday, October 29, 2020

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10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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Thursday, October 29, 2020

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

#1.00 STATUS CONFERENCE After Appeal RE: Complaint

Docket 1

Tentative Ruling:

Tentative for 10/29/20:

Pleadings are apparently not yet at issue, so all new counterclaims etc. that are going to be filed should be within thirty days and any responsive pleadings thereto within 21 days thereafter. Court will set deadlines for case management at continued status conference January 28, 2021 @ 10:00 a.m.

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
Christopher Minier

Trustee(s):

Weneta M Kosmala (TR) Pro Se

**United States Bankruptcy Court
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Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

8:18-14617 Donald M Larzelere

Chapter 7

Adv#: 8:19-01059 Collect Co. v. Larzelere et al

**#2.00 CONT STATUS CONFERENCE RE: Complaint objecting to discharge of debts
(cont'd from 8-13-20)**

[fr: 6/25/19, 9/24/19, 12/3/19, 2/25/20, 3/3/20, 4/7/20, 6/2/20]

Docket 1

Tentative Ruling:

Tentative for 10/29/20:
Dismiss. Appearance is optional.

Tentative for 8/13/20:
Status of payments per stipulation?

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Donald M Larzelere

Represented By
Dale F Hardeman

Defendant(s):

Donald M Larzelere

Pro Se

Bridget R Larzelere

Pro Se

Joint Debtor(s):

Bridget R Larzelere

Represented By

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CONT... Donald M Larzelere

Chapter 7

Dale F Hardeman

Plaintiff(s):

Collect Co.

Represented By
Marc Y Lazo

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
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Thursday, October 29, 2020

Hearing Room 5B

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) (cont'd from 4-23-20 per court's own mtn 9-24-19) (rescheduled from 4-30-2020 at 10:00 a.m. per court) (cont'd from 4-29-20 per order approving stip. to cont s/c entered 4-06-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 23, 2021
AT 10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED
10/6/2020**

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

- #4.00 STATUS CONFERENCE RE: Complaint For:**
- I. Denial Of Discharge Pursuant To 11 U.S.C. Sec. 727(a)(2-7);
 - II. Turnover Of Real Property Pursuant To 11 U.S.C. Section 542;
 - III. Turnover Of Funds Pursuant To 11 U.S.C. Sec. 542 & 543;
 - IV. Avoidance Of A Preferential Transfer Pursuant To 11 U.S.C. Sec. 547;
 - V. Avoidance Of A Preferential Transfer Pursuan To 11 U.S.C. Sec. 548;
 - VI. Avoidance Of A Post-Petition Transfer Pursuant To 11 U.S.C. Sec. 549
- (cont'd from 7-30-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-2021 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE THE DEADLINE FOR
DEFENDANTS TO RESPOND TO THE TRUSTEE'S FIRST AMENDED
COMPLAINT AND CONTINUING STATUS CONFERENCE ENTERED
10-06-20**

Tentative Ruling:

Tentative for 7/30/20:
See #12.1

Tentative for 6/3/20:
Continue per stipulation (not yet received).

Why no status report? The status conference has been continued by stipulation to June 4, 2020 at 10:00 a.m. as to Timothy Hughes, Jason Hughes, and Betty McCarthy. It remains on calendar to address any concerns of the non-signatory and then will be continued to June 4, 2020 at 10:00 a.m.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic

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10:00 AM

CONT... Deborah Jean Hughes Chapter 7

appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

Timothy M Hughes

Pro Se

Jason Paul Hughes

Pro Se

Betty McCarthy

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
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Thursday, October 29, 2020

Hearing Room

5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01088 Marshack v. Interstate Oil Company

#5.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims
(cont'd from 8-06-20)
(cont'd from 10-08-20 per another summons issued on 8-13-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-03-20 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUE STATUS
HEARING ENTERED 9-02-20**

Tentative Ruling:

Tentative for 8/6/20:
What is status of answer? Continue?

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Interstate Oil Company

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
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Courtroom 5B Calendar**

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

Adv#: 8:20-01097 AEPC Group, LLC v. SLATE ADVANCE

- #6.00** STATUS CONFERENCE RE: Complaint For:
1. Declaratory Relief;
 2. Usury;
 3. Injunction;
 4. Avoidance of Preferential Transfers;
 5. Avoidance of Lien and Equitable Subordination;
 6. Avoidance and Preservation of Lien Claims;
 7. Avoidance of Fraudulent Transfers;
 8. Avoidance of Fraudulent Transfers;
 9. Value of Assets and Extent of Lien;
 10. Disallowance of Claim;
 11. Unconscionability;
 12. California Business & Professions Code Section 17200 ET SEQ.;
 13. Negligence Per Se-Violation of California Finance Lending Law;
 14. Violation of New York General Business Law Section 349
- (con't from 9-03-20)**

Docket 0

Tentative Ruling:

Tentative for 10/29/20:

Continue per request to January 7, 2021 @ 10:00. If not resolved the court requests an amended status conference report with proposed deadlines.

Appearance is optional.

Tentative for 9/3/20:

Continue to October 29, 2020 @ 10:00 a.m.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By

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

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

CONT... **AEPC Group, LLC**

Chapter 11

Jeffrey S Shinbrot

Defendant(s):

SLATE ADVANCE

Pro Se

Plaintiff(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

8:19-12736 Christina Stolze Lopez

Chapter 7

Adv#: 8:20-01114 Kosmala v. Lopez

#7.00 STATUS CONFERENCE RE: Complaint For Judgment: (1) Avoiding Fraudulent Transfer Pursuant To 11 U.S.C. § 548(A)(1)(A); (2) Avoiding Fraudulent Transfer Pursuant To 11 U.S.C. § 548(A)(1)(B); (3) Recovery Of Fraudulent Transfer Pursuant To 11 U.S.C. § 550; (4) Preserving Fraudulent Transfer Pursuant To 11 U.S.C. § 551; (5) For Imposition Of Resulting Trust; (6) For Declaratory Relief; (7) Turnover Of Property Of The Estate Pursuant To 11 U.S.C. § 542(A); And (8) For Authorization To Sell Real Property In Which Co-Owner Holds Interest Pursuant To 11 U.S.C. § 363(H)
(set per another summons issued 8-5-2020)

Docket 1

Tentative Ruling:

Tentative for 10/29/20:

Deadline for completing discovery: January 31, 2021

Last date for filing pre-trial motions: February 12, 2021

Pre-trial conference on: Feb. 25, 2021 @ 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within ten days. One day of mediation to be completed by January 8, 2021.

Party Information

Debtor(s):

Christina Stolze Lopez

Represented By
Timothy McFarlin

Defendant(s):

Dario Lopez

Pro Se

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden

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

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

CONT... Christina Stolze Lopez

Chapter 7

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

8:20-11327 Heather Huong Ngoc Luu

Chapter 7

Adv#: 8:20-01117 E-Z Housing Group LLC v. Luu

#8.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt and Judgment for Fraud, Actual Fraud, False Pretenses, False Representation and Actual Fraud 11 USC Section 523(a)(2)(A) and Willful and Malicious Injury 11 USC Section 523(a)(6)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-10-20 AT 10:00 A.M.
PER ORDER APPROVING MOTION TO CONTINUE STATUS
CONFERENCE ENTERED 10-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Heather Huong Ngoc Luu

Represented By
Joshua R Engle

Defendant(s):

Heather Huong Ngoc Luu

Pro Se

Plaintiff(s):

E-Z Housing Group LLC

Represented By
Fritz J Firman

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 29, 2020

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 11

Adv#: 8:13-01278 Grobstein v. Harkey et al

**#9.00 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 7-2-20 per order approving stip. to cont. pre-trial conference and all other dates entered 6-19-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-25-2021 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE AND ALL OTHER DATES ENTERED 10-23-20**

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, October 29, 2020

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 5A Calendar**

Thursday, October 29, 2020

Hearing Room 5A

10:00 AM

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

Chapter 7

Adv#: 8:18-01107 Naylor v. Watanabe

**#10.00 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)]
(con't from 8-27-20 per order on stip. to cont. pre-trial entered 4-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-2021 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 8-18-20**

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

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

Thursday, October 29, 2020

Hearing Room 5A

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Defendant(s):

Neil Watanabe

Pro Se

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, October 29, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:18-01108 Naylor v. Miller

**#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)]
(cont'd from 8-27-20 per order on stip. to continue entered 4-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-2021 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 8-18-20**

Tentative Ruling:

Tentative for 11/8/18:
Status conference continued to February 28, 2018 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

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

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Defendant(s):

Dale Miller

Pro Se

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, October 29, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:18-01109 Naylor v. Gladstone

**#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)]
(cont'd from 8-27-20 per order on stip. entered 4-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-2021 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 8-18-20**

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, October 29, 2020

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, October 29, 2020

Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:18-01110 Naylor v. Doll

**#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)]
(cont'd from 8-27-20 per order on stipulation ent. 4-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-2021 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 8-18-20**

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

Thursday, October 29, 2020

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, October 29, 2020

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 PRE-TRIAL 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
(con't from 3-26-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 1/28/2021 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO: (1) CONTINUE
DEPOSITIONS; (2) EXTEND DISCOVERY CUTOFF AND PRE-TRIAL
DATES; AND (3) CONTINUE PRE-TRIAL CONFERENCE ENTERED 8-
19-20**

Tentative Ruling:

Tentative for 3/26/20:
Status conference continued to September, 26, 2020 at 10:00AM
Deadline for completing discovery:
Last date for filing pre-trial motions:
Pre-trial conference on: September 26, 2020 @ 10:00AM.
Joint pre-trial order due per local rules.

Was there a settlement or not? Can the terms be enforced?

Tentative for 2/6/20:
Status conference continued to March 26, 2020 at 10:00a.m.

Court expects finalization of reported settlement documentation.

Deadline for completing discovery: December 31, 2019
Last date for filing pre-trial motions: January 16, 2020
Pre-trial conference on: February 6, 2020

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

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

CONT... Nezamiddin Farmanfarmaian Chapter 7

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.

Party Information

Debtor(s):

Nezamiddin Farmanfarmaian	Represented By Timothy McFarlin
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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
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Trustee(s):

Jeffrey I Golden (TR)	Represented By Eric P Israel Aaron E de Leest
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01195 Joseph et al v. Griffithe

**#15.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt [11 U.S.C. Section 523(a)(2)(A) and (a)(4)]
(rescheduled from 4-15-2020 per court)
(set from 4-15-20 s/c hrg held)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION TO DISMISS PLAINTIFFS' ADVERSARY COMPLAINT
ENTERED 6-12-20**

Tentative Ruling:

Tentative for 4/15/20:
See #8

Tentative for 3/12/20:
Motion to dismiss was continued to April 16, 2020 at 10:00AM by stipulation.
Continue to April 16, 2020 at 10:00AM.

Tentative for 1/16/20:
This conference will travel together with the dismissal motion. Tentative on that is to continue to allow more briefing. Appearance not required.

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

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

Thursday, October 29, 2020

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

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, October 29, 2020

Hearing Room

5B

11:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

#16.00 Defendant Motion to Dismiss First Amended Complaint Pursuant to F.R.C.P. 12(b)(6), Incorporated by F.R.B.P. 7012

Docket 65

Tentative Ruling:

Tentative for 10/29/20:

This is Defendant Hamid Rowshan's ("Defendant's") motion to dismiss the first amended complaint ("FAC") filed by plaintiff and chapter 7 trustee, Richard Marshack ("Plaintiff") pursuant to Fed. R. Civ. P. 12(b)(6). Defendants and debtors Fariborz and Natasha Wasoughkia ("Debtors") filed an answer to the complaint asserting, among other affirmative defenses, failure to state any claim entitling Plaintiff to relief. However, it is not clear whether Debtors join in this motion. Defendant Wells Fargo Bank N.A ("Wells Fargo") had its deadline to respond to the FAC extended to November 27, 2020 by stipulation, which was approved by this court on September 30, 2020. Plaintiff opposes the motion.

1. Brief Procedural Background

On March 16, 2020, Trustee initiated an adversary proceeding against Defendants by filing a complaint to avoid and recover certain transfers pursuant to 11 U.S.C. §§ 549 and 550, to turnover property of the estate, to quiet title to real property, and for injunctive relief. On May 5, 2020, Defendant filed a motion to dismiss Trustee's complaint. On May 14, 2020, Wells Fargo filed a similar motion to dismiss Trustee's complaint. Given the significant overlap, the court considered both motions in tandem and at the hearing on June 3, 2020, granted both motions based largely on the finding that all of

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

Thursday, October 29, 2020

Hearing Room 5B

11:00 AM

CONT... **Fariborz Wosoughkia** Chapter 7

Plaintiff's causes of action were ostensibly barred by the applicable statutes of limitations, and that applicability of the equitable tolling doctrine was not supported by sufficient facts plausibly stated. The court granted 60 days leave to amend. The court's tentative ruling from the June 3 hearing is incorporated herein by reference. Plaintiff filed the FAC on August 3, 2020. Defendant filed the present motion on September 14, 2020.

2. Factual Background

The factual background for this motion is largely the same as the factual background provided in this court's June 3, 2020 adopted tentative ruling on the motion to dismiss the original complaint. That factual recitation is incorporated herein by reference. The court will note where new material facts are asserted as they correspond to each cause of action in the FAC.

3. The FAC

The FAC contains nine claims for relief:

- (1) Avoidance of unrecorded deed pursuant to 11 U.S.C. §544(a) against only Defendant;
- (2) Avoidance of fraudulent transfer pursuant to Cal. Civ. Code § 3439.04(a)(1) against only Defendant, which derives from 11 U.S.C § 544(b);
- (3) Avoidance of fraudulent transfer pursuant to Cal. Civ. Code § 3439.04(a)(2) against only Defendant which derives from §544(b);
- (4) Avoidance of fraudulent transfer pursuant to Cal. Civ. Code § 3439.05 against only Defendant which derives from §544(b);

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

Thursday, October 29, 2020

Hearing Room

5B

11:00 AM

CONT...

Fariborz Wosoughkia

Chapter 7

(5) Avoidance of unauthorized post-petition transfer pursuant to 11 U.S.C. §549 against Defendant and Wells Fargo;

(6) Recovery of avoided transfers pursuant to 11 U.S.C. 550 against all defendants;

(7) Turnover of property of the estate pursuant to 11 U.S.C. §§541 and 542 against Defendant;

(8) Action to quiet title to real property against all defendants;

(9) Injunctive relief against all defendants.

4. Motion to Dismiss 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,

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

Thursday, October 29, 2020

Hearing Room

5B

11:00 AM

CONT...

Fariborz Wosoughkia

Chapter 7

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 plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.* Threadbare recitals of elements supported by conclusory statements are not sufficient. *Id.*

5. Are Plaintiff's Claims Time Barred?

In granting the motion to dismiss the original complaint back in June, the court extensively discussed the issue of equitable tolling and ultimately held that equitable tolling could not save Plaintiff's complaint as originally pled. Though light on analysis, Defendant's current motion to dismiss has again raised the statutes of limitations or repose as an affirmative and complete defense, arguing that all causes of action are still time barred and not saved by equitable tolling.

As the court sees it, three major factual disputes of consequence are present. The first concerns the original transfer from Debtors to Defendant. Defendant asserts that the Eastvale Property was conveyed to him by Debtors on September 24, 2008, which was more than 2 years before Debtors filed their petition. This deed was apparently never recorded. Plaintiff argues that the operative grant deed was recorded in August of 2013, nearly three years after Debtors filed their petition. Stated another way, this first factual dispute likely governs whether the Eastvale Property is or was

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

Thursday, October 29, 2020

Hearing Room 5B

11:00 AM

CONT...

Fariborz Wosoughkia

Chapter 7

property of the estate. The second major factual dispute is whether Debtors' interest in the Eastvale Property was public information and relatively easy to locate through a title search. The third major factual dispute is whether Defendant and Debtors agreed to conceal assets in order to defraud creditors. Although the court is not obliged to make findings of fact in a Rule 12 context, the court is obliged to test the plausibility of asserted facts and allegations under the *Twombly* and *Iqbal* standards. As is set forth in more detail below, the question is whether Plaintiff has adequately pled facts in the FAC plausibly supporting the doctrine of equitable tolling since admittedly applicable statutes of limitation or repose have long expired.

When the court last took up this matter in June, the court urged Plaintiff to, at his discretion, amend the complaint to allege facts specifically targeted at the two prongs required to trigger the doctrine of equitable tolling: (1) the Plaintiff and original trustee's exercise of reasonable diligence in discovering the Eastvale Property; and (2) the extraordinary circumstance(s) that prevented either or both of them from discovering the existence of the Eastvale Property before the expiration of the applicable statutes of limitation/repose. See *In re Dugger*, 2012 WL 2086562, at *7 (B.A.P. 9th Cir. June 8, 2012). To Plaintiff's credit, he has so amended his complaint, but the question then becomes, are the amendments enough to support the doctrine of equitable tolling? It is worth remembering that in the Ninth Circuit, equitable tolling is extraordinary relief and not to be granted lightly. See *Cal. Franchise Tax Bd. V. Kendall (In re Jones)*, 657 F.3d 921, 926 (9th Cir. 2011) ("equitable tolling principles are...applied 'only sparingly' and generally in situations in which a party was precluded by some obstacle from acting within the limitations period.")

Regarding the first prong, exercise of reasonable diligence, the FAC details the original trustee's efforts to discover the existence of all property of the estate. The court is already aware of many of these efforts, and notes that the original trustee may have and likely did simply overlook the property because he relied on a third-party LexisNexis search, rather than going

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through a title company. (See June 3, 2020 Tentative ruling, p. 7) Again, Plaintiff asserts that he and the prior trustee are not required to conduct an exhaustive search, but only a reasonable one. The Eastvale property was of record in Debtors' name because the 2008 deed to Defendants was still unrecorded as of the petition. Plaintiff also argues that in granting Wells Fargo Bank's Motion, it appears that the issues of whether the Prior Trustee had a duty to investigate whether the estate had an interest in the Eastvale Property and whether Plaintiff had a duty to investigate the post-petition transfer of the Eastvale Property were incorrectly conflated. Of course, this raises questions because as Wells Fargo pointed out in the last proceeding, a proper title search likely would have revealed the Debtors' interests in the Eastvale Property going back to 2007 as was demonstrated in the *Mahdavi* adversary proceeding. The Trustee in the FAC argues that the court should overrule this argument because in the *Mahdavi* action, Debtors' interest in the Eastvale Property was only revealed through painstaking research carried out by a licensed real estate broker and creditor of Debtors. Thus, Plaintiff concludes, the effort required to find this information would be well-beyond the exercise of reasonable diligence. We must remember that this was a petition filed *in Orange County* whereas the Eastvale Property is in Riverside county and the Eastvale Property is not mentioned at all in the petition and schedules, nor, apparently, was it mentioned in the 341(a) testimony. We apparently do not have a transcript of that proceeding but Plaintiff argues that the standard questions about whether the schedules accurately reflecting all property would have revealed this information, if honestly answered.

The court appreciates the effort put forth in the FAC to close the gaps previously identified in the record. At this stage the court is required to take Plaintiff's allegations as true and view them in the light most favorable to him. Under *Twombly* and *Iqbal* the court is also obliged to test the plausibility of the allegations. Here, the court notes that the FAC's description of the arduous effort required to discover Debtors' interest in the Eastvale Property does not appear to be supported by reference to any evidence in the record.

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Similarly, Plaintiff's opposition does not reference any evidence to support these assertions. But this is a Rule 12 motion, where the court does not look outside the complaint but can rely upon the allegations of fact, provided they are plausible and plausibly support a theory of relief. The 2008 transfer occurred roughly 11 years prior to the complaint and more than two years before the petition. Plaintiff is seemingly barred by the statutes of limitations as the longest lookback period of any the asserted causes of action is 7 years from the date of transfer. (See Cal. Civ. Code §3439.09), but this does not account for the possibility of equitable tolling, which the court views as a basis for overlooking statutes of limitations (and maybe also statutes of repose) if equity requires it.

Defendant argues that on the 2nd, 3rd, and 4th §544(b) claims (which borrow a theory of relief from applicable state law), equitable tolling cannot enlarge the longest limitations period found in Cal. Civ. Code §3439.09, even under an equitable tolling theory. For this proposition is cited two authorities, *Roach v. Lee*, 369 F. Supp, 2d 1194 (C.D. Cal. 2005) and *Macedo v. Bosio*, 86 Cal. App. 4th 1044(2001). Although the *Roach* court did hold that the California statute was meant as an outside limitation designed to trump any counter argument based on fraudulent concealment, it never reached the federal doctrine of equitable tolling, so the court is not persuaded this is on point with our case, particularly since other authority, such as *Milby v. Templeton (In re Milby)*, 875 F. 3d 1229, 1232 (9th Cir.2017) have held the doctrine of equitable tolling is "read into every *federal* statute of limitation." Citing *Holmberg v. Armbrecht*, 327 U.S. 392, 397, 66 S. Ct. 582, (1946) (*italics added*). Of course, Defendant will argue the operative statute of repose found at Civil Code §3439.09 is California's, not federal. But the court in response notes that even if 544(b) adopts state law rather than federal, normally limitations are procedural questions governed by federal statutes. Further, such an approach is antithetical to the point of equitable tolling which essentially says that under certain circumstances where the trustee is diligent and must overcome extraordinary circumstances, equity prevails and it does

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not serve equity to say that some limitation intervenes to cut off relief despite any circumstances, however egregious. Also, equitable tolling would overcome alternative limitations such as 11 U.S.C. §546, which specifically catalogs within its terms actions brought under §544, and both subsections (a) and (b) of that statute comprise separate claims for relief in the FAC. This interpretation is supported by cases such as *Rund v. Bank of Am. Corp. (In re EPD Inv. Co., LLC)*, 523 B.R. 680 (9th Cir. B.A.P. 2015) where the court explained,

"[B]y enacting the Code, Congress has expressed an intent to regulate bankruptcy and maximize the bankruptcy estate for the benefit of creditors. Congress enacted § 544(b) and § 546(a) to foster a trustee's ability to avoid fraudulent transfers of property under state law and to recover that property for the benefit of the estate." *Id.* at 691

The *Rund* court continued,

"Although § 544(b) does not explicitly preempt state law, inclusion of § 546(a) in the Code evidences Congress' intent to subordinate state law restrictions." *Id.* (internal citations and quotations omitted)

The *Rund* court concluded,

"In considering both California and federal law, we conclude the time bar set forth in Cal. Civ. Code § 3439.09(c) frustrates Congress' intent in § 546 and collides with federal bankruptcy law. And, unlike the probate statute at issue in *Phar-Mor*, we see no substantial countervailing state interest that outweighs Congress' goal of maximizing the bankruptcy estate for the benefit of creditors. Therefore, pursuant to the Supremacy Clause, the state law must yield." *Id.* at 691-92 (internal citations and quotations omitted)

It should be noted that *Rund* never squarely reached the question of

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equitable tolling (*Rund*, 523 B.R. at 690) but goes on to hold that the two-year post-petition limitation found at 11 U.S.C. §546 would still apply. But the *Rund* decision could be read to hold that any existing theory of relief viable as of the petition date could not be cut off by intervention of a state law statute of repose such as Civil Code §3439.09 but remains subject to federal preemption. Logically this would apply here as the theory of relief under § 544(b) was viable as of the petition date and the federal limitation of §546(a) is subject generally to the equitable tolling doctrine. *Rund*, 523 B.R. at 691.

But the diligence prong is only the first of two. Plaintiff must still demonstrate some kind of extraordinary circumstance(s) that prevented discovery of Debtors' interest in the property. Plaintiff argues that, as former business partners, Defendant and Debtors conspired to conceal the Eastvale Property, and possibly other assets, in order to defraud creditors, which Plaintiff asserts, is an extraordinary circumstance that prevented discovery. Again, Trustee's assertions are light on evidentiary support, and there is at least some evidence going the other way. Defendant maintains that the Eastvale Property was conveyed to him in 2008 for nominal consideration and more than two years before Debtors filed their petition. Defendant submits a copy of the notarized grant deed in support of this assertion. Defendant also maintains that despite their history as business partners, Defendant had no knowledge of Debtors' bankruptcy case. Really? Defendant concedes that he failed to record his interest in the Eastvale Property until 2013 but gives no reason for this curious and extended delay. Moreover, there were a series of conveyances back and forth between Defendant and the Debtors in August and December 2013 which remain unexplained but appear to be related to attempts to refinance the property. One wonders if the prospective lenders were made aware of true beneficial ownership in those transactions. But the court does not weigh evidence in a Rule 12 motion. Rather, the task is to weigh whether a plausible theory of relief is alleged. The allegation of an active conspiracy between former business partners, combined with the unexplained delay in recording the 2008 deed for five years, and the

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unexplained substitution of an entirely different deed (what was that about?) that was actually recorded in 2013, and other attendant curiosities, makes the allegation of an active conspiracy to conceal plausible enough as "extraordinary circumstances" to get past a Rule 12 motion.

5. Property of the Estate?

Defendant argues that existence of property of the estate is not sufficiently alleged. Presumably this relates only to the §549 theory. The court disagrees. Paragraphs 9-14 make clear that Plaintiff alleges not only were the Debtors holders of record title as of the petition date, the unrecorded 2008 deed was an artifice to be used to disguise the debtors' true beneficial ownership. Moreover, §541(a)(1) makes clear that equitable ownership, as well as legal ownership, can constitute property of the estate, and ongoing equitable ownership of the Debtors is clearly alleged. This is enough for Rule 12 purposes.

6. Conclusion

This motion should be denied because the Trustee has alleged just enough to cross the threshold of plausibility needed to survive a Rule 12(b) motion. This is not to say that there are not large questions remaining in this case, including whether under all the facts and circumstances equitable tolling is truly appropriate, which may be revisited either at trial or in a Rule 56 context. But it is to say that enough is given to construct a plausible theory of relief considering doubts are resolved at this stage against the motion and in favor of Plaintiff.

Deny

Party Information

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CONT... Fariborz Wosoughkia

Chapter 7

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Natasha Wosoughkia

Represented By
Edward T Weber

WELLS FARGO BANK

Represented By
Zi Chao Lin

WELLS FARGO BANK, N.A.

Represented By
J. Barrett Marum

Hamid Rowshan

Represented By
Vincent Renda

Fariborz Wosoughkia

Represented By
Edward T Weber

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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2:00 PM

8:17-10988 Vitargo Global Sciences, Inc.

Chapter 11

Adv#: 8:19-01042 Laski v. Almada et al

#17.00 Application And Order For Appearance Of Anthony Almada To Enforce Judgment Of Debtor Examination
(cont'd from 7-23-20)

Docket 48

***** VACATED *** REASON: OFF CALENDAR - NOTICE RE:
CONDUCTING JUDGMENT DEBTOR EXAM VIA ZOOM MEETING
FILED 10-21-20**

Tentative Ruling:

Tentative for 7/23/20:
Status?

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
M Douglas Flahaut

Trustee(s):

Richard J Laski (TR)

Represented By

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CONT... Vitargo Global Sciences, Inc.

Chapter 11

M Douglas Flahaut
Aram Ordubegian
Christopher K.S. Wong
Leonard M Shulman
Ryan D O'Dea

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Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

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<https://cacb.zoomgov.com/j/1610808650>

ZoomGov meeting number: 161 080 8650

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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10:30 AM

8:20-11067 Thomas Casey Beales

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**FORD MOTOR CREDIT COMPANY LLC
Vs.
DEBTOR**

Docket 34

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 10-28-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Casey Beales

Represented By
Anthony B Vigil

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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8:20-12376 Ahmed Mohamed Elberry

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**AMERICAN HONDA FINANCE CORPORATION
Vs.
DEBTOR**

Docket 12

Tentative Ruling:

Tentative for 11/3/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Ahmed Mohamed Elberry

Represented By
Alaa A Ibrahim

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:20-12030 Eduardo Horta

Chapter 7

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 10-06-20)**

**LAGUNA VILLAGE OWNERS' ASSOCIATION, INC
Vs.
DEBTOR**

Docket 17

Tentative Ruling:

Tentative for 11/3/20:
Grant. Appearance is optional.

Tentative for 10/6/20:
No proof of separate service upon debtor. Continue.

Party Information

Debtor(s):

Eduardo Horta

Represented By
Timothy McFarlin

Movant(s):

Laguna Village Owners' Association,

Represented By
Brandon J Iskander

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

8:14-17318 Antoine A Johnson and Kelly J Johnson

Chapter 7

#4.00 Motion for Order Disallowing Debtors' Claimed Exemption and Requiring Turnover of Non-Exempt Funds

Docket 36

Tentative Ruling:

Tentative for 11/3/20:

This is the chapter 7 trustee, Jeffrey Golden's ("Trustee's") motion for order disallowing debtors Antoine and Kelly Johnson's ("Debtors") claimed exemption and requiring turnover of non-exempt funds. Debtors oppose the motion.

1. Background

Debtors filed a Voluntary Petition under Chapter 7 on December 19, 2014. Jeffrey I. Golden was the duly appointed and acting Chapter 7 Trustee of the resulting Estate. After investigation of the affairs of the Debtors, including a review of the schedules and statements and questioning of the Debtors during a Trustee Meeting under 11 U.S.C. § 341(a), Trustee found no assets to be administered, and filed a "no asset report" on February 2, 2015. The Debtors received their discharge on April 6, 2015, and the case was closed the following day.

Thereafter, Trustee received correspondence dated October 10, 2019 from Archer Systems, LLC ("Archer"), the court-appointed settlement administrator in multi-district litigation relating to an allegedly harmful diabetes medication apparently prescribed to Debtor Antoine A. Johnson. According to the correspondence, the Debtors retained counsel to stake their claim ("Claim") in the product liability litigation, based upon an injury date of September 8, 2014, which was pre-petition. The Claim is apparently in the process of being cleared for settlement in a gross amount of \$466,400, with a projected net of approximately \$260,924.53.

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Trustee notified Archer on October 15, 2019 that the Estate has an interest in the Claim, which was not scheduled by the Debtors or disclosed to Trustee, and which therefore remained property of the Estate even after the closing of the case under 11 U.S.C. § 554(d) (assuming the September 8, 2014 date is accurate). At Trustee's request, the Office of the United States Trustee filed a motion seeking the reopening of the case for the administration of the Claim. The motion was granted by Order entered March 19, 2020, and Trustee was reappointed. (See Docket, Exhibit "A", Docket Nos. 29, 30.) Five months later, the Debtors filed amended Schedules B and C, adding the Claim as an asset (identified as "Personal Injury Claim Settlement"), valued at \$259,000, and claiming the Claim as exempt in full under Cal. Civ. Proc. Code § 704.140(b).

2. Is the Asset Property of The Estate and/or Exempt?

The answer, as Trustee argues, is that it is probably too early to decide. Debtors argue that Trustee's motion fails to sufficiently link the settlement to the pre-bankruptcy past, which is the test Trustee's motion must pass. See 11 U.S.C. §541(a)(1). Further, Debtors argue that even if Trustee could establish such a connection, the asset would be exempt under Cal. Civ. Proc. §704.140, which exempts awards of damages or settlements arising from a personal injury to the extent necessary to support a spouse or dependents of the judgment debtor. Trustee asserts that he has reason to believe that he can show such a link to the period prior to Debtors' bankruptcy case, including using Debtors own schedules. At present, Trustee, the date of Debtor's initial injury is not known, which makes assessing whether the estate has an interest impossible or at least difficult at this point. As to the claim of exemption, Trustee cites *In re Milden*, 1997 U.S. App. LEXIS 7726 at *18 (9th Cir. 1997) citing *In re Haaland*, 89 B.R. 845 (Bankr. S.D. Cal. 1988), *aff'd* in part, *rev'd* in part on other grounds *sub nom. Haaland v. Corporate Management, Inc.*, 172 B.R. 74, 77 (S.D. Cal. 1989) for the proposition that the exemption under § 704.140 does not apply to past earnings. Trustee asserts that there is no evidence to establish when Mr. Johnson became disabled, or what the value of his lost wages would have been from that point

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to the date of filing. Thus, Trustee concludes, the non-exempt portion of the Estate's interest in the Claim is an unknown, at present.

Trustee suggests continuing this matter to a date in mid-December because the claims bar date is November 30. Trustee asserts that, to date, claims total only \$8,381.18. A continuance to a date in mid-December would allow for the establishment of the body of creditors, the presentation of additional evidence concerning lost wages, and possible settlement negotiations concerning a reasonable resolution of the Estate's interest in the proceeds. Debtors argue that principles of equity tilt toward finding in their favor. However, if the asset is property of the estate, then it should be made available for distribution to Debtors' pre-petition creditors and the question is whether any part is exemptible. Thus, Trustee probably has the right of it. Also, Trustee points out that because the issue is properly framed as a proceeding to determine the validity, priority, or extent of a lien or other interest in property, ownership of the asset must be determined through an adversary proceeding.

Continue to December 8 @ 11:00 a.m.

Party Information

Debtor(s):

Antoine A Johnson

Represented By
Douglas L Weeks

Joint Debtor(s):

Kelly J Johnson

Represented By
Douglas L Weeks

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Erin P Moriarty

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

Chapter 7

#5.00 First Omnibus Objection To Employee Claims:

Claims Subject to Objection:

Claim No. 62	Margaret Chavez
Claim No. 404	Jerona Pryor
Claim No. 815	Miguel Martin Sardinas
Claim No. 956	Michael Fischel
Claim No. 1018	Madeline Guadalupe
Claim No. 1380	Teodolindo Vargas

Docket 2841

Tentative Ruling:

Tentative for 11/3/20:
Sustain. Allow as 507(a)(4). 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

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CONT... Anna's Linens, Inc.

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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

Richard C Donahoo

Andrew Still

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

Chapter 7

#6.00 Objection Of Chapter 7 Trustee To Claim Of Countwise LLC

Docket 2851

Tentative Ruling:

Tentative for 11/3/20:
Sustain. Allow as general unsecured.

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

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
Andrew Still

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#7.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 50 Filed By Stearns Lending, LLC
(cont'd from 9-29-20 per order approving seventh stip. re: claim no. 50 entered 9-25-20)

Docket 248

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION RESOLVING THE OBJECTIONS TO AND MOTIONS TO DISALLOW PROOFS OF CLAIM 50,52 AND 54 ENTERED 10-23-20**

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
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#8.00 STATUS CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 51 Filed By Lakeview
Loan Servicing, LLC
(cont'd from 9-29-20 per ordered approving seventh stip. to cont. hrg. on
clm. #51 entered 9-25-20)**

Docket 249

Tentative Ruling:

Tentative for 11/3/20:
The court will consider suggestions for deadlines.

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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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#9.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 52 Filed By First Federal Bank of Florida
(cont'd from 9-29-20 per order ent approving seventh stip. to cont. hrg on clm # 52 entered 9-25-20)

Docket 250

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION RESOLVING THE OBJECTIONS TO AND MOTIONS TO DISALLOW PROOFS OF CLAIM 50, 52 AND 54 ENTERED 10-23-20**

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, November 3, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#10.00 STATUS CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 53 Filed By Lakeview
Loan Servicing, LLC
**(cont'd from 9-29-20 per order approving seventh stip. to cont. hrg clm. 53
entered 9-25-20)**

Docket 251

Tentative Ruling:

Tentative for 11/3/20:
See #8.

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, November 3, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#11.00 Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 54 Filed By Lakeview Loan Servicing, LLC (cont'd from 9-29-20 per order approving seventh stip. to cont. clm # 54 entered 9-25-20)

Docket 252

*** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION RESOLVING THE OBJECTIONS TO AND MOTIONS TO DISALLOW PROOFS OF CLAIM 50, 52 AND 54 ENTERED 10-23-20

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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Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#12.00 STATUS CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 61 Filed By Lakeview
Loan Servicing, LLC
**(cont'd from 9-29-20 per order approving seventh stip. to cont. hrg on clm.
#61 entered 9-25-20)**

Docket 255

Tentative Ruling:

Tentative for 11/3/20:
See #8.

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
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Santa Ana
Judge Theodor Albert, Presiding
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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#13.00 STATUS CONFERENCE RE: 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
(cont'd from 9-29-20 per order approving seventh stip. entered 9-23-20)**

Docket 256

Tentative Ruling:

Tentative for 11/3/20:
See #8.

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
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#14.00 Lexington National Insurance Corporation's Objection to and Motion to Disallow Proof of Claim No. 70 filed by Carrington Mortgage Services, LLC
(cont'd from 9-29-20 per order approving fifth stipulation re: clm no. 70 entered 9-28-20)

Docket 263

*** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND CARRINGTON MORTGAGE SERVICES, LLC RESOLVING THE OBJECTIONS TO AND MOTION TO DISALLOW PROOF OF CLAIM NO. 70 ENTERED 11-02-20

Tentative Ruling:

Tentative for 2/25/20:
See #11

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
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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#15.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim No.. 87 Filed By Trust Bank
(cont'd from 9-29-20 per order approving fifth stip re: claim #87 and #88 entered 9-28-20)

Docket 449

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE
CORPORATION AND TRUST BANK RESOLVING THE OBJECTONS
TO PROOFS OF CLAIM NO. 87 AND 88 ENTERED 11-02-20**

Tentative Ruling:

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
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#16.00 Lexington National Insurance Corporation's Limited Objection To Proof Of Claim No. 88 Filed by Trust Bank
(cont'd from 9-29-20 per ordered approving fifth stip. to cont. objections to claim no. 88 entered 9-28-20)

Docket 451

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION AND TRUST BANK RESOLVING THE OBJECTIONS TO PROOFS OF CLAIM NO. 87 AND 88 ENTERED 11-02-20**

Tentative Ruling:

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
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Wednesday, November 4, 2020

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#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1608622898>

ZoomGov meeting number: 160 862 2898

Password: 811704

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

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- NONE LISTED -

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8:19-10552 Bruce Reyner

Chapter 11

#1.00 CONT Post Confirmation Status Conference

[fr: 3/6/19, 5/1/19, 7/24/19, 9/11/19, 10/2/19, 1/29/20, 4/29/20, 10/28/20]

Docket 1

Tentative Ruling:

Tentative for 11/4/20:

Continue for further status conference to March 10, 2021 @10:00 a.m. with expectation that a motion for administrative closing and/or final decree will be filed in meantime.

Appearance: optional

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Bruce Reyner

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Wednesday, November 4, 2020

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10:00 AM

8:20-12278 Bryan Joseph Klinger

Chapter 11

#2.00 Creditor's Motion to Dismiss Chapter 11 Case As A Bad Faith Filing

Docket 37

Tentative Ruling:

Tentative for 11/4/20:

This is creditor, WVJP 2018-3, LP's ("WVJP") motion to dismiss debtor, Bryan J. Klinger's ("Debtor's") Chapter 11 bankruptcy case pursuant to 11 U.S.C. §1112(b) as a bad faith filing. Debtor opposes the motion.

1. Background

The following facts, as far as the court can tell, are not disputed. On October 13, 2009, WVJP's assignor, Centro Watt Property Owner I, LLC ("Centro Watt"), obtained a default judgment (the "Judgment") in the original amount of \$153,368.58 against Debtor and another person (Tobie Ann Collins) in the litigation entitled *Centro Watt Property Owner L LLC v. Tobie Ann Collins, et al.*, Superior Court of California, County of Orange, Case No. 30-2008 00102765-CU-BC-WJC (the "State Court Litigation"). On November 18, 2009 and November 19, 2009, abstracts of judgment were recorded with the Orange County Recorder and the San Diego County Recorder, respectively. On August 14, 2019, the Judgment was assigned to WVJP, and an Acknowledgment of Assignment of Judgment was filed in the State Court Litigation on August 26, 2019. On September 17, 2019, WVJP filed in the State Court Litigation an Application for and Renewal of Judgment (the "Renewal Application"), thereby renewing the Judgment in the amount of \$297,732.42. WVJP recorded the Renewal Application with the Orange County Recorder's Office on September 23, 2019, and with the San Diego County Recorder's Office on September 24, 2019.

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On or about December 16, 2019, Debtor filed in the State Court Litigation a motion to vacate renewal of the Judgment. WVJP opposed the Debtor's motion. After the parties fully briefed the motion, the Honorable James J. Di Cesare of the Orange County Superior Court heard the Debtor's motion. Before the hearing, Judge Di Cesare issued a detailed Tentative Ruling. Among the findings contained in Judge Di Cesare's Tentative Ruling were the following:

Defendant seeks to vacate the renewed judgment which is based upon the original default judgment that was entered in October of 2009. Defendant seeks to vacate the renewed judgment on the grounds that he was never served with the summons and complaint.

In reaching a decision, a trial court would consider such factors as the timing of the testimony, overall candor of parties/witnesses, reasonableness and level of recall, contemporaneous information versus less contemporaneous statements, as well as consideration to motives.

Here, in weighing the testimony of the Klingers, against the opposing evidence, the Court finds that the Defendant has not met the burden to show by a preponderance of the evidence, that the service did not occur. The Court found significant the contemporaneous statements of the registered process server, including that the process server was indeed at the Defendant's residence at the time, something the moving papers were unclear about but was brought out by in the subsequent filings. The Court found significant the revelation in the Opposition that the Defendant had made contact with the plaintiff's counsel about this lawsuit in July of 2010, which was information omitted from within the moving papers. When weighing all of this and the other evidence, and the reasonable inferences to be drawn therefrom, Defendant's evidence did not reach the hurdle of defeating the opposing evidence

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to establish by a preponderance of the evidence, that the renewed judgment must be set aside.

For these reasons, the Motion is denied. See O'Neil Declaration, ¶¶ 7 and Ex. 9.

WVJP argues that on June 9, 2020 (after significant delays caused by the COVID-19 pandemic and the Superior Court's closure for a number of weeks), Judge Di Cesare issued his formal order denying the Debtor's motion to vacate the Judgment. WVJP asserts that, with interest at the statutory rate of 10% per annum, the renewed Judgment amount, which was \$297,732.42 as of September 17, 2019, now totals at least \$327,505.66 (\$297,732.42 x 110%), exclusive of additional attorneys' fees incurred and to be incurred by WVJP.

On August 14, 2020, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor reveals the following in his Schedules (Docket No. 18): The Debtor is unemployed. The Debtor's spouse nets \$2,775.24 per month from her work. The Debtor's two rental properties (Festival Drive and Orchard) net \$2,100 per month. Aside from the Judgment, Debtors unsecured debt totals only \$3,646.73, which is comprised of a handful of minor debts, the largest of which is only \$1,492.50. Docket No. 18 at pp. 12-15. WVJP asserts that during the meeting of creditors on September 14, 2020, under questioning by the United States Trustee's counsel and WVJP's counsel, the Debtor admitted the following:

- (1) The mortgages on the Debtor's real properties are paid current;
- (2) The property taxes on the Debtor's real properties are paid current
- (3) The homeowner's association dues on the Debtor's real properties are paid current.

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Based on the foregoing facts, most, if not all, of which are not really contested by Debtor, WVJP argues that Debtor is using this bankruptcy proceeding as a delaying tactic on enforcement the Judgment against him, and also impermissibly seeking to have his case re-litigated in this court.

2. Is This Case A Bad Faith Filing?

Bankruptcy Code section 1112 provides, in pertinent part:

(b)(l) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that-

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and (B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)-- (i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

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11 U.S.C. § 1112.

Chapter 11

Although §1112 does not expressly mention "bad faith" as a ground to dismiss a Chapter 11 case, bad faith in filing a Chapter 11 case constitutes "cause" for dismissal under section 1112. See *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828-29 (9th Cir. 1994) ("courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal"); see also *Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.)*, 84 B.R. 167, 170 (BAP 9th Cir. 1988) ("It is appropriate to dismiss a Chapter 11 case for cause if it appears that the petition was filed in bad faith"). The Debtor "bears the burden of proving that the petition was filed in good faith." *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935, 940 (BAP 9th Cir. 1997); *In re Powers*, 135 B.R. 980, 997 (Bankr. C.D. Cal.1991) ("courts have consistently held that once a debtor's good faith is in issue, the debtor bears the burden of proving the petition was filed in good faith"). Several, but not all, of the following conditions typically exist when a bankruptcy case is filed in bad faith:

- (1) The debtor has one asset, such as a tract of undeveloped or developed real property.
- (2) The secured creditors' liens encumber this tract.
- (3) There are generally no employees except for the principals.
- (4) There is little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments.
- (5) Typically, there are only a few, if any, unsecured creditors whose claims are relatively small.
- (6) The property has usually been posted for foreclosure because of arrearages on the debt and the debtor has been unsuccessful in

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defending actions against the foreclosure in state court.

(7) Alternatively, the debtor and one creditor may have proceeded to a stand-still in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford.

(8) Bankruptcy offers the only possibility of forestalling loss of the property.

(9) There are sometimes allegations of wrongdoing by the debtor or its principals.

(10) The "new debtor syndrome," in which a one-asset entity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors, exemplifies, although it does not uniquely categorize, bad faith cases. See *Little Creek Devel. Co. v. Commonwealth Devel. Corp. (In re Little Creek Devel. Co.)*, 779F.2d 1068, 1072 (5thCir.1986).

Not all the *Little Creek* factors need be present to dismiss a case for lack of good faith. See *In re Southern California Sound Systems, Inc.*, 69 B.R. 893,899 (Bankr. S.D. Cal.1987) (dismissing a Chapter 11 case where only four of the *Little Creek* factors were present).

Here, WVJP argues that no fewer than 8 of the 10 *Little Creek* factors are present: First, WVJP's lien encumbers the Debtor's real properties, notwithstanding the Debtor's misrepresentation in his Schedule F that WVJP is unsecured. Second, there are no employees: The Debtor manages his real properties on his own. See the O'Neill Declaration at 113. Third, the Debtor has disposable income of only \$1,229.24 per month, which is insufficient to make plan payments or to pay even the interest that is accruing on WVJP's secured claim. Fourth, there are only four unsecured creditors, their claims total only \$3,646.73, and the largest unsecured claim is only \$1,492.50. The Debtor has more than \$15,000 in cash, which is more than enough to fully

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pay the insignificant unsecured claims immediately. See Docket No. 18, p. 4. Fifth, WVJP plans to "foreclose" by conducting one or more Sheriffs sales of the Debtor's real properties, and the Debtor has been unable to prevent such sales in that he litigated and lost his motion to set aside the Judgment in the State Court Litigation. Sixth, the Debtor and WVJP have proceeded to a stand-still in the State Court Litigation, leaving WVJP with a Judgment and the Debtor unable to set aside that Judgment. Seventh, bankruptcy offers the only possibility of forestalling loss of any of the Debtor's real properties. And Eighth, the Debtor omitted material facts from his state court motion to set aside the Judgment, claiming he was never served, despite having had contact with Centro Watt's counsel back in 2010; and the Debtor filed misleading bankruptcy schedules, falsely claiming that WVJP is unsecured and deliberately failing to correct inaccuracies in his bankruptcy schedules even after being informed of the same at his creditor meeting. Thus, WVJP concludes, the *Little Creek* factors and the accompanying undisputed facts weigh heavily in favor of finding that this bankruptcy case was filed in bad faith.

As noted, Debtor does not directly dispute many of the facts asserted against him, including those above. Instead, Debtor makes the rather tall assertion that WVJP may not have a judgment against him after all as WVJP has provided insufficient admissible evidence that the judgment was ever effectively assigned to WVJP, and as such, WVJP has no standing to bring this motion. Moreover, Debtor asserts that WVJP has failed to authenticate Judge Di Cesare's order denying Debtor's motion to vacate the default judgment against him. Furthermore, Debtor once again argues that he was never properly served with summons and complaint in the original action, which led to the default judgment against him.

There are obvious problems with these arguments. They read as so much grasping at straws. But the main problem is that Debtor has had the opportunity to and likely did raise many of these arguments in the State Court Litigation proceeding to vacate the default judgment back in late 2019 before

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Judge Di Cesare. For the reasons explained in his tentative ruling, Judge Di Cesare did not find Debtor's arguments convincing. Debtor asserts that the state court did not resolve whether WVJP actually held the judgment or whether the judgment itself was valid, only that Debtor did not meet his burden to vacate the default judgment. Debtor suggests that an adversary proceeding would be necessary to determine such questions. It would seem to the court that Debtor is likely incorrect on at least one of those assertions. In deciding that Debtor failed to carry his burden of demonstrating cause to vacate the default judgment, the court was, in effect, ruling that the default judgment against Debtor was valid. The only arguably remaining question is whether WVJP is the valid holder of the judgment. Again, this question appears to have been resolved in public state court filings (See O'Neill Declaration, Ex. 4 and Declaration of Steven Gallagher, Ex. 1). Thus, even if an adversary proceeding were commenced, it is not clear what purpose that would accomplish beyond running up fees for both Debtor and WVJP, as a Rule 56 motion asserting issue and/or claim preclusion would likely immediately follow.

The bankruptcy court is not the proper venue to lodge an appeal or to simply re-litigate that which has already been decided in state court, which, apparently by his own admission, is what Debtor is doing here. Courts in the Ninth Circuit have held that bad faith exists where a debtor files a petition with the only intention of defeating state court litigation. *In re Leavitt*, 209 B.R. at 940. As noted, Debtor bears the burden of proving that the petition was filed in good faith. For all of Debtor's attempts to obscure the critical facts with various evidentiary objections, Debtor, rather tellingly, never actually denies the veracity of the allegations themselves. Thus, Debtor has not carried his burden of demonstrating that the bankruptcy petition was filed in good faith.

Moreover, aside from attempting to re-litigate the State Court Litigation and the Judgment, this Chapter 11 has all the earmarks of a "dead on arrival" reorganization case and Debtor has not even begun to show how the requirements of §1112(b)(2)(A) might be fulfilled here. Debtor never even

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addresses the daunting proposition of trying to cramdown a plan when 98% of the debt is held by one hostile creditor. The absolute priority rule would also be an obstacle in that almost certainly the WVJP debt would have to be paid in full for the Debtor to keep anything. See 11 U.S.C. §1129(b)(2)(B). While one might construct a farfetched scenario whereby these challenges could be procedurally met (arguably), the court does not see how there is enough income here to make any such plan feasible as required in §1129(a)(11) nor could the plan be in "good faith" as is required under §1129(a)(3). But adding to these problems, the court agrees that *Rooker-Feldman* prohibits this court from hearing any case which is, in effect, a rehash of the lost attempts at undoing the Judgment in state court. Using the bankruptcy system for this sole purpose is improper and the motion should be granted.

Grant

Party Information

Debtor(s):

Bryan Joseph Klinger

Represented By
Illyssa I Fogel

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8:19-14893 Talk Venture Group, Inc.

Chapter 11

**#3.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363
(cont'd from 9-02-20)**

Docket 7

Tentative Ruling:

Tentative for 11/4/20:
Continue on same terms until hearing on disclosure 12/2.

Tentative for 9/2/20:
Grant on same terms and conditions pending further hearing November 4 @ 10:00a.m. The court expects a plan will be on file shortly?

Tentative for 6/30/20:
Status? Continue on same terms another 60 days? When can we see a plan?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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CONT... Talk Venture Group, Inc.

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Tentative for 5/13/20:

This matter is on calendar because permitted use of cash collateral is set to expire as of the hearing per previous order. Nothing further has been filed as of 5/8. Status? The March MOR shows slightly positive cash flow, so, absent objection, the logical order would seem to be continued authority on same terms and conditions for about 60 days.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

Debtor filed an amended motion for use of cash collateral on 4/1/20. Unfortunately, this amended motion is likely untimely because there is nearly no time for any other party to respond before the hearing date on 4/8. In any case, the new amended motion does not appear to address Banc of California's objections to continued use of cash collateral. Therefore, the amended motion should be continued to allow creditors, including Banc of California, adequate time to respond. In the meantime, Debtor should answer Banc of California's allegations of misusing cash collateral.

Continue for about two weeks on same terms. Debtor to address Banc Of California's points. Appearance is optional.

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Courtroom 5B Calendar**

Wednesday, November 4, 2020

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 1/22/20:
Continue same terms until April 8, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
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Judge Theodor Albert, Presiding
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Wednesday, November 4, 2020

Hearing Room 5B

10:00 AM

8:20-11749 Navarrete Investments, LLC

Chapter 11

**#4.00 Motion In Chapter 11 Case For Order Authorizing Use Of Cash Collateral
[11 U.S.C. Section 363]
(cont'd from 8-12-20)**

Docket 30

Tentative Ruling:

Tentative for 11/4/20:

Continue on same terms and conditions to January 6, 2020 @10:00 a.m. which is after the "drop dead" date established in the recent relief of stay order, at which point debtor will have to report upon whether there is anything that can be reasonably done in this case.

Tentative for 8/12/20:

Secured Creditor's concerns are understandable. The court is unclear as to how Debtor proposes to pay the creditors. The Subject Property has been on the market for more than six months and Secured Creditor asserts that not a single offer has come in. Debtor vaguely states that there are marketing efforts going on, but nothing besides the pandemic to explain why no offers are forthcoming. The Subject Property has also recently converted to a rental property. Does Debtor still plan on selling the Subject Property? If not, vague reference is made to a possible refinance to pay creditors. What would that look like? What is the proposed timeline? The motion does not provide answers to these questions. However, the court is generally supportive of Debtors in possession taking steps to preserve value of collateral, and that appears to be what Debtor intends to do with the cash collateral. Perhaps the better part of valor is to grant the motion on an interim or temporary basis with a status conference scheduled in the near future so that Debtor can put together a proposal for paying Secured Creditor, whether through a sale, a refinance, or some other arrangement. If the court is not satisfied with the arrangement, the motion will be denied.

The argument that there is an ample equity cushion is not persuasive

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CONT... Navarrete Investments, LLC

Chapter 11

for at least two reasons. First, the valuation comes from the debtor which, of course, is self-serving. While it is true that owners are not disqualified from opining as to the value of assets they own, that does not mean that the court has to give them the same weight as valuations from professional appraisers. Of course, the creditor does not offer a professional appraisal either.

But the second concern arises from the fact that apparently the property has been for sale for six months, without result. This suggests downward adjustments may be in order. In the end the property has to be maintained and managed, or it will not generate any income and will not show well for sale either. Consequently, the court is inclined to grant the motion for a four-month trial basis with the proviso that all rents must be used for property upkeep and management only, with no more than a 10% management fee paid to any insider, including the daughter.

Grant on described basis pending further hearing to November 4, 2020 @ 10:00 a.m..

Party Information

Debtor(s):

Navarrete Investments, LLC

Represented By
Julian K Bach

Movant(s):

Navarrete Investments, LLC

Represented By
Julian K Bach

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Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1612143737>

ZoomGov meeting number: 161 214 3737

Password: 512582

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

11/4/2020 3:02:52 PM

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- NONE LISTED -

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10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01098 Joseph v. United States Of America

**#1.00 STATUS CONFERENCE RE: Complaint for Refund of Income Taxes.
(con't from 8-06-20 per order continuing status conference ent. 8-03-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
ADVERSARY PROCEEDING ENTERED 10-22-20**

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
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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
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Thursday, November 5, 2020

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10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01022 Avery v. WELLS FARGO BANK, NATIONAL ASSOCIATION et al

**#2.00 STATUS CONFERENCE RE: Complaint For Avoidance And Recovery Of
Unauthorized Post-Petition Transfer
(con't from 10-01-20)**

Docket 1

Tentative Ruling:

Tentative for 11/5/20:

Status concerning compromise authorized by order entered October 23, 2020?

Tentative for 10/1/20:

Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:

The court's order to mediate was not a suggestion. As the court recollects, the amount in dispute is now down to \$5800, is that right? If so, it is madness not to settle this. Since the parties seem not to be cooperating (neither side's position impresses), if a mediator is not agreed within ten days then each side to select a mediator, and those two will choose a single third person to serve as actual mediator for them from the panel. Mediation may occur remotely, but is to be completed within 90 days. The conference will be continued but if a mediation does not occur as ordered within the time allowed you may expect sanctions which could include striking of pleadings. Continue approximately 120 days.

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CONT... Long-Dei Liu

Chapter 11

Tentative for 2/20/20:
See #3.

Deadline for completing discovery: May 1, 2020
Last date for filing pre-trial motions: May 25, 2020
Pre-trial conference on:
Joint pre-trial order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by May 1, 2020.

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

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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

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01023 Avery v. Shen Liu

**#3.00 STATUS CONFERENCE RE: Complaint for Avoidance And Recovery Of
Unauthorized Post-Petition Transfer
(con't from 10-01-20)**

Docket 1

Tentative Ruling:

Tentative for 11/5/20:

Recent status report suggests we are truly settled, awaiting some performance?

Status concerning compromise authorized by order entered October 23, 2020?

Tentative for 10/1/20:

Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:

Same as #11.

Tentative for 2/20/20:

See #3.

Dates and deadlines same as #2.

Tentative for 11/7/19:

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CONT... Long-Dei Liu

Chapter 11

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
Kyra E Andrassy

Defendant(s):

Shu Shen Liu

Pro Se

Plaintiff(s):

Wesley H. Avery

Represented By
Laila Masud
D Edward Hays

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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 10-01-20)

Docket 1

Tentative Ruling:

Tentative for 11/5/20:
Status concerning compromise authorized by order entered October 23, 2020?

Tentative for 10/1/20:
Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:
Same as #11 and 12.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

Tentative for 11/7/19:
Deadline for completing discovery: December 31, 2019
Last date for filing pre-trial motions: January 21, 2020

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CONT... Long-Dei Liu

Chapter 11

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
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

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8:16-11588 Long-Dei Liu

Chapter 11

Adv#: 8:19-01027 Avery v. Bank of America Corporation et al

#5.00 STATUS CONFERENCE RE: Complaint For Avoidance, Recovery, And Preservation Of Unauthorized Post-Petition Transfers (con't from 10-01-20)

Docket 1

Tentative Ruling:

Tentative for 11/5/20:
Status concerning compromise authorized by order entered October 23, 2020?

Tentative for 10/1/20:
Either off calendar or continue to coincide with compromise motion.

Tentative for 5/27/20:
Same as #11, 12, 14.

Tentative for 2/20/20:
See #3.

Dates and deadlines same as #2.

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.

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CONT... Long-Dei Liu

Chapter 11

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
Shu Shen Liu	Pro Se

Plaintiff(s):

Wesley H. Avery	Represented By
	Laila Masud
	D Edward Hays

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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: 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 9-24-20)**

Docket 1

Tentative Ruling:

Tentative for 11/5/20:
Status? Appearance: required

Tentative for 9/24/20:
See #5.

Tentative for 8/13/20:
See #2.

Tentative for 7/23/20:
Status?

Tentative for 6/25/20:
See #17.

Tentative for 4/29/20:

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**CONT... Richard Paul Herman
Status?**

Chapter 7

Tentative for 3/26/20:
See # 12-14.

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
Jeanne M Jorgensen

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CONT... Richard Paul Herman

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders

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8:17-14117 Richard Paul Herman

Chapter 7

Adv#: 8:19-01075 Foothill Financial, L.P. v. Herman et al

- #7.00** Order to Show Cause why Richard P. Herman should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay
(set by Order entered 3-18-20)
(cont'd from 9-24-20)

Docket 113

Tentative Ruling:

Tentative for 11/5/20:

This is the oft-continued status conference on what Foothill and the trustee argue is ongoing contempt of this court's earlier rulings: (1) defining what was and what was not sold by the Trustee to Foothill and (2) imposing a monetary sanction for conduct in the state court seeming to contradict those orders by contumacious persistence in attempting to litigate the same claims in state court. The Hermans are now on their Third Amended Complaint in a state court of limited jurisdiction. The issue this court has (as alluded to in the 9/24 tentative) is that it is no longer clear what is being litigated is necessarily inconsistent with this court's earlier orders. The action seems now to be focused upon the urn and the plants, and alleged damages arising from alleged misconduct by Foothill either in disposing of those items in conjunction with Foothill's eviction of the Hermans. Or from delay in returning them to the Hermans. Reportedly, the urn was returned, and its possession no longer is an issue. What might be an issue, however, is whether any emotional distress type damages are recoverable under California law and if they are, whether they would be appropriate here. The parties each cite California caselaw and /or statutes suggesting either that it is not (Foothill) or that it is (Herman). So long as it is made clear to the state court that causation of such damages, if any, is confined to the plants and to the urn, and are not somehow a parcel with the alleged wrongful foreclosure or eviction, this is not a bankruptcy issue and are probably outside the ambit of

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CONT... Richard Paul Herman

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this court's orders. The court is inclined to let the parties hash this out in state court where it belongs. About nonpayment of the monetary sanction already imposed, levy of the writs for amounts already ordered is quite sufficient and the court is not disposed to other more intrusive methods.

Absent a clear violation of the above basics, this court believes its role is at an end.

No further status conference is to be scheduled but may be put on calendar if the need arises.

Tentative for 9/24/20:

This matter is distressing in that the court's sanctions orders reportedly remain unpaid, and debtor makes no showing of impossibility on payment, which might theoretically have been a defense to further contempt. He apparently just refuses to pay. That might be remedied if the levies undertaken by Foothill bear fruit, but nothing on that subject appears in the papers. But it does cause the court to wonder what, if anything, would be accomplished by upping the monetary sanction further. Foothill suggests that defiance is ongoing in the Third Amended Complaint in state court in that Sabrina Herman reiterates what Foothill characterizes as the same emotional damages claims as were already the subject of what the Trustee sold to Foothill. That is not so clear. Although as drafted the Third Amended Complaint recites at length the sad ten-year history of this dispute (to which end is not made clear) the prayer seems focused on the personal property (plants and urn), and any consequential damages that might emanate therefrom. So construed that might not violate this court's earlier order except that the court seems to remember a monetary cap, but it is not sure whether that relates to the possibility of emotional distress damages based on conversion of personalty (if such thing exists in California law). Presumably Sabrina Herman, and her husband acting as lawyer, will argue that the long recital of history in the Third amended Complaint is not an attempt to reopen the causes of action already sold but just to inform the state court on background. The court does observe this is now in limited jurisdiction court so

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CONT... Richard Paul Herman

Chapter 7

there might be a de facto lid on damages in any event. So, the parties are invited to explain exactly how this conduct continues to violate this court's previous orders in such a way as to constitute ongoing contempt. But failure to pay what is already ordered is still an open question on that point.

No tentative.

Tentative for 8/13/20:

The sanction was doubled at the 7/23 hearing but reportedly nothing has been paid in whole or in part of any portion. Even more grave is the report that the Hermans have filed a motion before the state court for leave to amend the complaint which, although seemingly labelled as confined to negligent destruction of personal property, nevertheless asserts millions in damages for emotional distress and punitive damages, which, as a whole, seems a thinly disguised re-assertion of claims this court has already ruled were owned by the estate and sold by its trustee to Foothill. But, reportedly, the state court has relegated the amendment motion for the limited jurisdiction court to decide. Depending on how that goes it would seem that these proposed amendments may not be allowed, or at least not allowed consistent with the jurisdiction of that court deciding the question, and thus effectively foreclosed. In either case, it would seem that Mr. Herman does not intend to accept this court's decisions. The court is inclined to see whether the amendment is allowed by the limited jurisdiction court before assessing whether yet more sanctions or other measures are warranted.

Tentative for 7/23/20:

New for 7/23: Mr. Herman's objection to order for sanctions and stay of proceedings pending appeal. Mr. Herman argues that he has appealed this court's contempt order, which divests this court of jurisdiction. This objection was filed on 6/26/20.

The objection is linked to the notice of lodgment of the order requiring

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CONT... Richard Paul Herman

Chapter 7

Herman to pay \$2,000 as a sanction for his continuing violation of this court's May 11, 2020 contempt order.

Foothill and the Chapter 7 Trustee have filed a joint supplemental report noting Mr. Herman's continuing noncompliance. Per the report, Mr. Herman is continuing his campaign in state court asserting that this wife may make claims beyond that which this court set forth. The state court has apparently issued an OSC re dismissal and a separate OSC regarding the court's proposed transfer of the Surviving Claims to a court of limited jurisdiction (i.e. claims for damages of less than \$25,000). These matters are set for hearing on August 7, 2020. Unsurprisingly, Mr. Herman has also failed to pay the sanction to Foothill as ordered.

Regarding Mr. Herman's assertion that the appeal divests this court of jurisdiction over the contempt order, Foothill cites *Hoffman v. Beer Drivers and Salesmen's Local Union No. 88*, 536 F.2d 1268, 1276 (9th Cir. 1976) for the proposition that, in the context of contempt proceedings like the ones here, "where the court supervises a continuing course of conduct and where as new facts develop additional supervisory action by the court is required, an appeal from the supervisory order does not divest the [court] of jurisdiction to continue its supervision, even though in the course of that supervision the court act upon or modifies the order from which the appeal is taken." Trustee further cites *Hughes v. Sharp*, 476 F.2d 975 (9th Cir. 1973), where the court noted, that when the contemnor is a party to the pending proceedings, and when those proceedings are still under way, the court lacks jurisdiction to consider the purported appeal from a contempt order as that order is interlocutory. The court stated that although this may seem harsh, a contemnor is not without recourse, as among his options is purging his contempt. *Id.* Foothill also notes that the notice of appeal was untimely and that a new appeal cannot be initiated by simply amending the notice of appeal; a new notice of appeal is required.

By contrast, Mr. Herman's objection is completely devoid of analysis and contains only vague citations to cases standing for the broad proposition that an appeal divests the bankruptcy court of jurisdiction over those aspects of the case involved in the appeal. But those cases cited by Mr. Herman do not undercut the cases cited by Foothill. Mr. Herman has not filed anything

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CONT... Richard Paul Herman

Chapter 7

responsive to Foothill's supplemental report.

The message that the court sent to Mr. Herman at the last hearing on 6/25 was apparently not received, even when Mr. Herman was unambiguously ordered to pay a sanction of \$2,000 to Foothill to put a sharper point on the message. Mr. Herman seems to be operating on the misguided assumption that his appeal puts him out of reach of this court, leaving him free to pursue conduct this court has already characterized as contumacious. However, as the case law cited above demonstrates, the court remains vested with the power to monitor Mr. Herman's ongoing misconduct, and modify the contempt order as necessary.

The court has already noted that Mr. Herman is playing with fire by continuing to ignore this court's orders. It does not appear, however, that Mr. Herman is altering his course. Rather, he persists, relying on legalistic arguments about finality of orders which, as explained above, are not persuasive. But this course is causing real, continuing damages to Foothill. So, the court has little choice but to raise the stakes in hopes of reaching the requisite coercion threshold. The sanction is doubled to \$4,000, payable forthwith to Foothill. The court notes that the Superior Court has now also scheduled this matter on order to show cause for August 7, 2020. A further hearing will be scheduled for a mutually convenient date after August 7 to evaluate where we stand and whether yet more coercion is needed.

Tentative for 6/25/20:

Following the hearing on the OSC re: Contempt on April 29, Foothill Financial and Trustee jointly lodged an order on April 30. The official order issued on May 11. Mr. Herman filed an untimely objection to the lodged order.

To accompany his objection to the lodged order, Mr. Herman attached his own proposed order, which bears little resemblance to the actual ruling on the OSC and several other orders issued by this court.

The most consequential rewrite Mr. Herman makes to his proposed order is

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Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 5, 2020

Hearing Room

5B

10:00 AM

CONT...

Richard Paul Herman

Chapter 7

where he states that per our abstention order, he is allowed to pursue in state court all claims that may belong solely to his wife with no limit on value. This is despite the many orders issued by this court where the specific claims the court abstained from are listed. Foothill's response catalogues the various orders and judgments with the court's very clear language articulating the narrow scope of its abstention.

Mr. Herman appears to have seized upon the most miniscule ambiguity to deliberately disregard the language and spirit of this court's orders in an attempt to reframe his dismissed claims as belonging solely to his wife, thereby allowing him to re-litigate them in state court. Mr. Herman may have already filed a version of his order with the state court. Foothill and Trustee are understandably dismayed by this latest attempt to hinder and delay.

In light of this most recent and fairly egregious transgression, Foothill requests that the court now impose monetary sanctions. Foothill suggests that Mr. Herman should pay the fees incurred by Foothill as a result of Mr. Herman's ongoing contempt, which Foothill estimates in its status report at \$7,500.

Mr. Herman has filed his own status report asserting that the contempt order is on appeal and there is nothing else to be adjudicated by this court at this time, all matters now being with the district court.

Mr. Herman is playing with fire. Rather than displaying even a modicum of compunction after being adjudged to be in contempt, Mr. Herman asserts in his objection that his contempt is now purged, and that it never truly existed in the first place. Mr. Herman, we should not forget, is also an attorney, and is presumed to be able to understand court orders and the consequences for disregarding them. Thus, a measured and modest monetary sanction is likely appropriate, with the promise of more severe sanctions to follow if Mr. Herman continues to misconduct himself.

The court requests an update on whether Mr. Herman actually lodged a bogus form of order with the state court. Impose monetary sanctions of \$2000 payable jointly to Foothill and Trustee.

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CONT... Richard Paul Herman

Chapter 7

Tentative for 4/29/20:

This is a hearing on the court's Order to Show Cause why Debtor, Richard P. Herman ("Debtor") should not be held in Contempt of Court for Violating Court Orders and The Automatic Stay. The OSC was issued on March 18, 2020. Specifically, the OSC requires that Debtor demonstrate:

(a) Why he should not be held in contempt for

- i. his continuing efforts to exercise control over and interfere with the dismissal of the estate's claims in direct violation of the express provisions of this Court's orders and Judgment as well as the provisions of the automatic stay; and
- ii. his continuing violation of this Court's permanent injunction by continuing to assert and pursue claims in the state court that this Court has enjoined him from asserting or pursuing.

(b) Why he should not be subjected to the following sanctions:

- i. Imposition of a coercive fine, payable to the Court, for each day that he remains in contempt; and
- ii. Compensatory damages incurred by Foothill and the Trustee as a result of Mr. Herman's contemptuous conduct, including the attorneys' fees and costs incurred to prepare the Motion and appear at the hearing thereon, and any additional attorneys' fees and costs incurred by Foothill and/or the Trustee to respond and appear with respect to Mr. Herman's pleadings filed in the state court in violation of this Court's orders.

Both Debtor and Foothill Financial, L.P. ("Foothill") have filed timely

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CONT... **Richard Paul Herman**
responses.

Chapter 7

Debtor's response is not persuasive. The main problem is that Debtor feigns ignorance or misunderstanding of this court's orders. Debtor appears to be arguing that his action(s) in state court are legitimate considering this court's abstention from adjudicating the remaining claims that were not deemed property of the estate. As argued effectively by Foothill in its response, this court has been clear in its delineation between what causes of action are and are not property of the estate. The court has clearly stated in prior adopted tentative rulings, the "surviving claims" are limited to claims for negligent damage to personal property in an amount not to exceed \$3,500, and for his wife to pursue the same cause of action provided that she could establish that the damaged property was her separate property. These very narrow categories can have little relationship with what Debtor seems to persist in filing in the State Court.

As argued by Foothill, Mr. Herman is contending, here and in the State Court, that the "abstained claims" include claims other than the surviving claims identified by this court, which Mr. Herman argues are to be "defined in the State Court." Foothill notes that Debtor's response cites no authority or document that could possibly lead Debtor to such an understanding.

To aggravate the problem, Debtor is a licensed attorney of long standing, and so may be reasonably presumed to be able to understand court orders, and importantly, the consequences for ignoring them. Thus, his reported actions, which he does not deny, can be viewed as deliberate refusals to abide by this court's lawful orders.

Debtor's citation to *Taggart* is inapposite as Debtor does not really attempt to draw any parallels between *Taggart* and the present case, nor could he.

As Foothill correctly notes, unlike in *Taggart*, neither Foothill nor the Trustee has sought damages under 11 U.S.C. § 362(k), but rather this

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proceeding involves the court's authority to enforce its orders by imposing civil contempt remedies. Moreover, although there is more than ample basis for this court to find that Debtor's conduct was (and continues to be) "willful," the Supreme Court in *Taggart* expressly held that, in the civil contempt context, it is error to apply a subjective standard. *Id.* at 1804; see also *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003) (no finding of bad faith or willful misconduct is required as "the focus is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue") (internal quotations omitted). Instead, the Supreme Court held, "[b]ased on the traditional principles that govern civil contempt, the proper standard is an objective one." *Taggart*, 139 S. Ct. at 1804. Thus, Foothill argues, under *Taggart*, remedies for civil contempt are appropriate where "there is no objectively reasonable basis for concluding that the [contemnor's] conduct might be lawful under the . . . order." *Id.* at 1801 (rejecting a "good faith" defense and instead establishing an objective reasonableness standard in the context of contempt proceedings arising out of the violation of a discharge order).

The court has patiently entertained Debtor's numerous motions, many of which have been of dubious merit and suspected of being nothing more than attempts to delay enforcement of Foothill's legal rights. Many have been repetitive and do nothing but rehash the same issues. The court is now left with no option but to use its coercive powers to compel Debtor to abide by its orders. Thus, the question then is, what form should the coercive measures take? Foothill suggests the following measures be imposed:

1. Order Debtor to pay to the court a fine in the amount of \$1,000 for each day that he remains in contempt, and direct that, in addition to ceasing and desisting from any further contemptuous behavior, Debtor shall cure his existing contempt forthwith by immediately filing with the State Court a notice: (1) withdrawing his motion for reconsideration seeking to set aside the State Court's dismissal of the Estate Claims as requested by the Trustee, and (2) affirming to the State Court that the only cause of action that the Hermans

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CONT... Richard Paul Herman

Chapter 7

assert is the remaining single cause of action for negligent damage to personal property, which cause of action is limited to (a) Debtor's "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) Debtor's "claim 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."

2. That the court compensate Foothill for its attorneys' fees and costs incurred to prepare the Motion and this reply, and to appear at the hearing on the Order to Show Cause, by ordering Debtor to pay to Foothill, by no later than May 15, 2020, the amount of \$6,000, which is the minimum amount of fees and costs incurred by Foothill as a result of Mr. Herman's contempt.

The court will forbear from the harsher methods, for now. But Debtor must accept that the matter has been decided, and further gainsaying is not only a waste of resources but an affront to the court and to the other parties, and thus a further contempt. Debtor may purge his contempt by promptly filing a withdrawal of the reconsideration motion on the dismissal of the "Estate claim" and affirming that insofar as the State court action will continue, it will be confined to the limited issues as outlined in paragraph 1 above. The court will not rule upon the other suggested sanctions as outlined in paragraph 2, for now, pending a report to be filed at least 14 days before the continued hearing regarding the dismissal etc. mentioned above.

The court finds debtor is in contempt. Initial sanction is as outlined above. A further hearing will be scheduled in approximately 60 days when status of compliance, and thus possible further sanctions, will be considered.

Party Information

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CONT... Richard Paul Herman

Chapter 7

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

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

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10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #8.00** 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 3-12-20)
(con't from 9-03-20 per stip. to cont. pre-trial conference entered 8-10-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-10-20 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUE PRE-TRIAL
HEARING ENTERED 8-28-20**

Tentative Ruling:

Tentative for 3/12/20:

First, why the very late status report? Filing less than 2 days before the status conference not only violates the LBRs, it is an affront and imposition upon the court. Be prepared to discuss the suitable amount of sanctions.

Status conference continued to July 2, 2020 at 10:00AM.

Deadline for completing discovery: May 30, 2020

Last date for filing pre-trial motions: June 22, 2020

Pre-trial conference on:

Joint pre-trial order due per local rules.

Tentative for 2/27/20:

Is this resolved? Dismiss?

Tentative for 1/9/20:

See #3

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10:00 AM

CONT... Catherine M Haretakis

Chapter 11

Tentative for 12/19/19:
See #2.1

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.

Party Information

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

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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

**#9.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 8-06-20 per order approving stip. to cont. amended mtn to dsm and s/c entered 7-23-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-04-2021 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 10-23-20**

Tentative Ruling:

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

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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

#10.00 Motion to Dismiss Adversary Proceeding
**(con't from 8-06-20 per order approving stip. to cont. amended mtn to
dism and s/c entered 7-23-20)**

Docket 3

***** VACATED *** REASON: CONTINUED TO 2-04-2021 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 10-23-20**

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

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01042 Marshack v. CapCall LLC, a New York Limited Liability Company

#11.00 Defendant EBF Partners, LLC's Motion to Dismiss Complaint For Failure To State A Claim For Relief And For More Definite Statement
(cont'd from 9-03-20 per order approving stip. to cont. mtn to dismiss entered 8-24-20)

Docket 79

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
STIPULATION RE PARTIAL DISMISSAL OF ADVERSARY
PROCEEDING FILED 10-27-20**

Tentative Ruling:

Tentative for 11/5/20:
Resolved by stipulation filed 10/27. Hearing vacated. No appearance required.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Represented By
Lei Lei Wang Ekvall

EBF Partners LLC, a Delaware

Represented By
Michael W Davis

Forward Financing LLC, a Delaware

Represented By
M Douglas Flahaut

Mantis Funding LLC, a Delaware

Represented By
Howard Steinberg

NEXGEN Capital Limited Liability

Pro Se

Queen Funding LLC, a New Jersey

Pro Se

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CONT... i.i. Fuels, Inc. Chapter 7

Yes Funding Corp., a New York	Pro Se
Atlas Acquisitions, LLC, a New	Pro Se
Capital Stack Fund II LLC, a	Pro Se
New Era Lending, a California	Pro Se
Arch Capital Advisors, Inc., a	Pro Se
CoreFund Capital, LLC, a Texas	Represented By Lei Lei Wang Ekvall

Plaintiff(s):

Richard A Marshack	Represented By Rafael R Garcia-Salgado Robert P Goe
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Trustee(s):

Richard A Marshack (TR)	Represented By Robert P Goe
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2:00 PM

8:17-12406 Elmer Clarke

Chapter 7

Adv#: 8:17-01245 Little v. Clarke

#12.00 Motion For Summary Judgment

Docket 34

***** VACATED *** REASON: OFF CALENDAR - ORDER OF
DISMISSAL FOR THE FAILURE OF KATIE LITTLE TO PAY \$6,000 IN
MONETARY SANCTIONS TO PATRICK J D'ARCY, APLC BY
OCTOBER 5, 2020 AND 2) DEFENDANT'S COUNSEL'S NON-RECEIPT
OF A BONAFAIDE FIRST DRAFT ENTERED 10-08-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

Defendant(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

Plaintiff(s):

Katie L. Little

Represented By
R Grace Rodriguez

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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10:30 AM

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Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1616013331>

ZoomGov meeting number: 161 601 3331

Password: 618555

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Chapter

Tentative Ruling:

- NONE LISTED -

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11:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

#1.00 Fourth Interim Application For Award Of Compensation And Reimbursement Of Expenses For Period: 11/1/2019 to 9/30/2020:

**DANNING, GILL, ISRAEL & KRASNOFF, LLP, AS GENERAL COUNSEL TO
CHAPTER 7 TRUSTEE**

FEE: \$63,136.50

EXPENSES: \$566.50

Docket 136

Tentative Ruling:

Tentative for 11/10/20:
Allow as prayed. Appearance 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

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11:00 AM

8:19-14600 Consumer Financial Alliance LLC

Chapter 7

#2.00 Chapter 7 Trustee's Motion For An Order Compelling Thomas J. Lynch Pursuant To 11 U.S.C. Section 542 To: (1) Turnover Property Of The Estate; And (2) Provide An Accounting Of All Funds Received PostPetition

Docket 48

***** VACATED *** REASON: CONTINUED TO 12-01-20 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
OF THE CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER
COMPELLING THOMAS J. LYNCH PURSUANT TO 11 USC 542 TO: (1)
TURNOVER PROPERTY OF THE ESTATE; (2) PROVIDE AN
ACCOUNTING ENTERED 10-30-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Consumer Financial Alliance LLC

Represented By
Krystina T Tran

Trustee(s):

Thomas H Casey (TR)

Represented By
Krystina T Tran

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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#3.00 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 9-01-20)

Docket 457

Tentative Ruling:

Tentative for 11/10/20:
Is there any reason to change status quo?

Tentative for 9/1/20:
See #16.

Tentative for 2/6/20:
See #12

Tentative for 8/1/19:
No tentative.

Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

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CONT... **Kenny G Enterprises, LLC**

Chapter 7

Tentative for 3/6/18:
No tentative.

Tentative for 1/24/17:
See #15.

Tentative for 9/14/16:
See #6.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#4.00 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 9-01-20)

Docket 0

***** VACATED *** REASON: THIS MATTER HAS BEEN CONSOLIDATED WITH STATUS CONFERENCE RE: CH 7 TRUSTEE'S MOTION FOR AN ORDER FINDING KENNETH GHARIB AND FREEDOM INVESTMENT CORP IN CONTEMPT OF COURT, IMPOSING SANCTIONS AND CONTINUED INCARCERATION SEE DOCUMENT # 457**

Tentative Ruling:

Tentative for 9/1/20:

Personal appearance is not required. The hearing will be via ZoomGov. Links have been posted. It appears that nothing has changed since last we met on this subject and the contemnor is as defiant as ever. Interestingly, he apparently now refuses to testify as to the disposition of the money rather than "double down" on any of his previous stories or those reported from his brother. Trustee requests that an inference be drawn from this blanket refusal. The court will hear argument on that point and how it affects continuing contempt. The court took some hope from our last meeting that the debtor actually wanted to testify, to make clear that his impossibility defense had merit. But no, nothing has changed, apparently. But this is also true regarding the pandemic so, absent a violation of furlough terms, the status quo should continue until the earlier of a purging of the contempt or a lifting of the danger from the virus. Set continued status conference date.

Tentative for 2/6/20:
See #12

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CONT... Kenny G Enterprises, LLC

Chapter 7

Tentative for 8/1/19:
See #17

Tentative for 2/6/19:
See #5.

Tentative for 9/25/18:
No tentative.

Tentative for 3/6/18:
No tentative.

Tentative for 1/24/17:

This is the oft-continued hearing for status conferences concerning Kenneth Gharib's ("contemnor"), ongoing contempt, as well as a hearing on his motion late-filed on January 12 as #17 on calendar, styled as: "Notice of Motion and Motion to Dismiss the Sanction Order; Defense of Impossibility to Comply as of January 2017." The court repeats verbatim below the tentative decision from its September 14, 2017 hearings because, regrettably, nothing or almost nothing has changed. For those earlier hearings and conferences the court wrote:

"This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court

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CONT...

Kenny G Enterprises, LLC

Chapter 7

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).

Here, with even a mild degree of skepticism it is sufficient to find

**United States Bankruptcy Court
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CONT...

Kenny G Enterprises, LLC

Chapter 7

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

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Chapter 7

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 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

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CONT...

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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) 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

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CONT... Kenny G Enterprises, LLC

Chapter 7

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 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

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CONT... **Kenny G Enterprises, LLC**
ongoing contempt and/or defense of impossibility

Chapter 7

Tentative for 9/14/16:

This is the continued status conference regarding Mr. Gharib's ongoing contempt, purging the contempt and/or regarding the defense of impossibility. At the last status conference June 16, 2016 the court continued the matter until August 24, 2016. In the meantime the Trustee filed a motion for continuance until September 14 and ,in turn, Mr. Gharib on August 15 filed a "Motion to Dismiss Sanction Order Due to Impossibility to Comply..." which was not set for separate hearing, but is construed as part of the ongoing issue of the impossibility defense. Mr. Gharib has been in custody under this court's order since May of 2015.

It is clear that the contemnor has the burden of proving impossibility. But Mr. Gharib has cited *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F. 2d 770 (9th Cir. 1983) for the proposition that impossibility is a complete defense, *even if self-induced*. *Id.* at 779-82 n. 7 quoting *United States v. Rylander*, 656 F. 2d 1313, 1318 n. 4 (9th Cir. 1981). As the Trustee has argued, this authority is somewhat dubious since the discussion in *Falstaff* is in *dicta* and one of the authorities relied upon by the *Falstaff* court, *United States v. Rylander*, was later overturned in *United States v. Rylander*, 460 U.S. 752, 103 S. Ct. 1548 (1983). Further, on the very question before us, i.e. the 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

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CONT... Kenny G Enterprises, LLC

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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 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

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Kenny G Enterprises, LLC

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dollars of funds in that account was spent in a variety of items and the remaining funds were transferred to D Coffee Shop Corp (see exhibit "26"). Trustee also subpoenaed D Coffee Shop Corporation bank account in Bank of America (See exhibit "28" and "29"). D Coffee Shop Corp's bank statements show Mr. Rushtabadi was authorized signer and the remaining balance in D Coffee Shop Corp's account was spent in variety of items, and nothing left over in that account as of December 2015, 8 months ago. Gharib has no information why and for what purpose the funds were spent in both Office Corp and D Coffee Shop Corp. Gharib was incarcerated during that period (May to December 2015). Gharib has no information as to identity of stock holder of either Office Corp or D Coffee Shop Corp. Gharib was not part of any of the above Corporations in any way or shape... Gharib did not have any interest or ownership in any of the above corporations at all. It is undisputable that that all funds (whether proceed of sales of Hillsborough or Foreigner investors' money) in both corporations were spent and gone (definitely not by Gharib)...."

Gharib's "Motion to Dismiss..." filed August 15, 2016 at pp. 4-5

Since the last hearing the Trustee has been unable to find or subpoena Mr. Rushtabadi, Gharib's brother. That a brother would be apparently so indifferent to Mr. Gharib's ongoing incarceration so as to not offer his assistance or at least testimony is by itself rather noteworthy, particularly since Mr. Rushtabadi does know of the incarceration and makes telephone calls at Gharib's behest. But the Trustee was able to depose Ms. Firouzabadi August 26, 2016 [See Trustee's Exhibit "4"]. From her testimony it develops that she had a romantic relationship with Gharib allegedly 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

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CONT... **Kenny G Enterprises, LLC**

Chapter 7

therefrom [Transcript p. 75, line 6-7] and identified that her purported signature on several of said corporations' papers offered as exhibits by the Trustee were forgeries. [Transcript at p. 56, line 1-17] Interestingly, she also testified that Mr. Rushtabadi, the brother, requested by telephone just before the deposition that *she leave the country*. [Transcript pp. 22-23] Why she should leave her home on such short notice at Mr. Rushtabadi's request was not clarified but the implication is pretty clear, to avoid service just as Mr. Rushtabadi has reportedly done (at least so far).

In sum, the court is even less persuaded than before that Mr. Gharib does not have continuing access to funds and the ability to control funds, using various skills, to purge the contempt either in part or in whole. His stories about what happened to the Hillsborough proceeds, about phantom investments in Iranian real estate, unnamed "foreigner investors" and the like, have absolutely no substance or corroboration and defy all credibility. The few details offered have proven to be either outright lies or very suspect, at best. In sum, Mr. Gharib's burden of proving impossibility has not been carried.

Deny motion to dismiss. Continue for further evaluation conference.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Raymond H Aver

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#5.00 Motion For Possible Incarceration
(set from order of release entered 4-24-20)
(cont'd from 10-01-20)

Docket 0

***** VACATED *** REASON: THIS MOTION HAS BEEN
CONSOLIDATED WITH DOCUMENT #457**

Tentative Ruling:

Tentative for 7/30/20:
No tentative.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders
Devon L Hein
Tracy Casadio

Trustee(s):

Thomas H Casey (TR)

Represented By

**United States Bankruptcy Court
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CONT... Kenny G Enterprises, LLC

Thomas H Casey
Ronald N Richards

Chapter 7

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11:00 AM

8:18-13894 Daniel J Powers

Chapter 13

Adv#: 8:19-01046 Powers et al v. Alamitos Real Estate Partners II, LP

**#6.00 PRE-TRIAL CONFERENCE: To Discuss Procedures For Trial Re: Complaint
(set from order entered 10-14-20) (advanced from 11-12-2020 at 10:00 a.m.
per court)**

Docket 1

Tentative Ruling:

Tentative for 11/10/20:
Exhibits to be filed on the docket by November 16, 2020.

Plaintiff's exhibits should be organized by number and defendant's by letter.
The exhibits should be organized in three ring binders.

Each party and witness should have the exhibits available in front of them
during trial.

Is there a need to sequester witnesses? Time their appearances?

The parties must ensure that we have enough binders for each side and each
witness, as needed.

Party Information

Debtor(s):

Daniel J Powers

Represented By
Charles W Hokanson

Defendant(s):

Alamitos Real Estate Partners II, LP

Represented By
Robert J Stroj

Joint Debtor(s):

Ellen A Powers

Represented By

**United States Bankruptcy Court
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CONT... Daniel J Powers

Chapter 13

Charles W Hokanson

Plaintiff(s):

Daniel J Powers

Represented By
Charles W Hokanson
Robert J Stroj

Ellen A Powers

Represented By
Charles W Hokanson
Robert J Stroj

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, November 12, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1607819700>

ZoomGov meeting number: 160 781 9700

Password: 672763

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at:

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Chapter

<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

**United States Bankruptcy Court
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Thursday, November 12, 2020

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 8-06-20 per order approving stip. to cont s/c entered 7-15-20)**

Docket 1

***** VACATED *** REASON: RESCHEDULED FOR 12/10/2020 at 10:00
A.M. PER COURT**

Party Information

Debtor(s):

Anna's Linens, Inc.

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

Defendant(s):

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
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
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CONT... Anna's Linens, Inc.

Chapter 7

Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

**United States Bankruptcy Court
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Thursday, November 12, 2020

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

#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 10-08-20)

Docket 1

***** VACATED *** REASON: RESCHEDULED FOR 12/10/2020 at 10:00 A.M. PER COURT**

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
Aksel Ingolf Ostergard Jensen	Pro Se
Oussha Shlaimoun	Pro Se

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10:00 AM

CONT... Zia Shlaimoun Chapter 7

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

**United States Bankruptcy Court
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Santa Ana
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Thursday, November 12, 2020

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 (con't from 9-03-20 per order on application for cont. of initial s/c entered 9-02-20)

Docket 1

***** VACATED *** REASON: RESCHEDULED FOR 12/10/2020 AT 10:00 A.M. PER COURT**

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
Kathleen J McCarthy
Brendan Loper

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, November 12, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

**#4.00 STATUS CONFERENCE RE: Complaint for: 1) Avoidance of Unauthorized Post-Petition Transfer (11 USC Section 549); 2) Recovery of Avoided Transfers (11 USC Section 550); 3) Turnover of Property of the Estate; 4) Quiet Title to Real Property and 5) Injunctive Relief
(cont'd from 9-10-20 per order to cont. s/c entered 9-02-20)**

Docket 1

***** VACATED *** REASON: RESCHEDULED FOR 12/10/2020 AT 10:00 A.M. PER COURT**

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Hamid Rowshan

Pro Se

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

WELLS FARGO BANK

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

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 12, 2020

Hearing Room

5B

10:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

#5.00 STATUS CONFERENCE RE: Complaint For: I. Turnover 11 U.S.C. Sec. 542 & 543; II. Avoidance 11 U.S.C. Sec. 544; III. Avoidance 11 U.S.C. Sec. 548; IV. Liability 11 U.S.C. Sec. 550; V. Avoidance 11 U.S.C. Sec. 549; VI. Sale Of Property 11 U.S.C. Sec 363(h); VII. Avoidance 11 U.S.C. Sec. 547
(con't from 9-03-20)

Docket 1

***** VACATED *** REASON: RESCHEDULED FOR 12/10/2020 AT 10:00 A.M. PER COURT**

Party Information

Debtor(s):

Jee Hyuk Shin Pro Se

Defendant(s):

Jee Hyuk Shin Pro Se

GODDO SAVE Pro Se

Jae Shin Pro Se

Bang Shin Pro Se

Insook Shin Pro Se

Seafresh Restaurant Pro Se

Jeemin Shin Pro Se

Mini Million Corporation Pro Se

Theodore Ebel Pro Se

Mojerim, Inc. Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

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

Thursday, November 12, 2020

Hearing Room 5B

10:00 AM

CONT... Jee Hyuk Shin

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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

Thursday, November 12, 2020

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

**#6.00 PRE-TRIAL CONFERENCE: To Discuss Procedures For Trial Re: Complaint
(set from order entered 10-14-20)**

Docket 1

***** VACATED *** REASON: ADVANCED TO 11/10/2020 AT 11:00 A.M.
PER COURT**

Party Information

Debtor(s):

Daniel J Powers

Represented By
Charles W Hokanson

Defendant(s):

Alamitos Real Estate Partners II, LP

Represented By
Robert J Stroj

Joint Debtor(s):

Ellen A Powers

Represented By
Charles W Hokanson

Plaintiff(s):

Ellen A Powers

Represented By
Charles W Hokanson
Robert J Stroj

Daniel J Powers

Represented By
Charles W Hokanson
Robert J Stroj

Trustee(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 12, 2020

Hearing Room 5B

10:00 AM

8:12-17406 Matthew Charles Crowley

Chapter 7

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

#7.00 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8) (cont'd from 10-08-20 per order on stip. to continue pre-trial conf. entered 9-22-20)

Docket 1

***** VACATED *** REASON: RESCHEDULED FOR 12/10/2020 at 10:00 A.M. PER COURT**

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, November 12, 2020

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 Stipulation Regarding Discovery Dispute (Post-Judgment Discovery and Judgment Debtor Examinations of Dr. Robert Amster, Robert Amster, M.D., Inc., and Your Neighborhood Urgent Care)

Docket 444

***** VACATED *** REASON: CONTINUED TO 11-17-20 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
Teresa C Chow
Tiffany Payne Geyer

Defendant(s):

Hoag Memorial Hospital

Represented By
Randy B Soref
Tanya Behnam

Newport Healthcare Center, LLC

Represented By
Randy B Soref
Tanya Behnam

Plaintiff(s):

Richard A Marshack

Represented By
Caroline Djang
Tiffany Payne Geyer

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, November 12, 2020

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

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, November 12, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

#9.00 Andrew R. Corcoran's Motion To Dismiss Or In The Alternative Stay Or Transfer

Docket 38

***** VACATED *** REASON: CONTINUED TO 12-10-20 AT 11:00 A.M.
PER COURT'S ORDER**

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

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

Thursday, November 12, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Thursday, November 12, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

#10.00 Matthew C. Browndorf's Motion To Dismiss Or In The Alternative Stay Or Transfer

Docket 43

***** VACATED *** REASON: CONTINUED TO 12-10-20 AT 11:00 A.M.
PER COURT'S OWN MOTION**

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver

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

Thursday, November 12, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Thursday, November 12, 2020

Hearing Room 5B

11:00 AM

8:17-12406 Elmer Clarke

Chapter 7

Adv#: 8:17-01245 Little v. Clarke

- #11.00** PRE-TRIAL 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)]
(set from s/c held on 3-12-20)
(cont'd from 9-03-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER OF
DISMISSAL FOR THE FAILURE OF KATIE LITTLE TO PAY \$6,000 IN
MONETARY SANCTIONS TO PATRICK J D'ARCY, APLC BY
OCTOBER 5, 2020 AND 2) DEFENDANT'S COUNSEL'S NON-RECEIPT
OF A BONAFIDE FIRST DRAFT ENTERED 10-08-20**

Party Information

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

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 12, 2020

Hearing Room 5B

11:00 AM

8:17-12406 Elmer Clarke

Chapter 7

Adv#: 8:17-01245 Little v. Clarke

#12.00 Motion to Dismiss Adversary Proceeding Brought By Katie Little Without Prejudice For Want Of Prosecution Against Elmer Clarke
(cont'd from 9-03-20)

Docket 29

*** VACATED *** REASON: OFF CALENDAR - ORDER OF DISMISSAL FOR THE FAILURE OF KATIE LITTLE TO PAY \$6,000 IN MONETARY SANCTIONS TO PATRICK J D'ARCY, APLC BY OCTOBER 5, 2020 AND 2) DEFENDANT'S COUNSEL'S NON-RECEIPT OF A BONA FIDE FIRST DRAFT ENTERED 10-08-20

Party Information

Debtor(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

Defendant(s):

Elmer Clarke

Represented By
Patrick J D'Arcy

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
Courtroom 5B Calendar**

Thursday, November 12, 2020

Hearing Room

5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Richard A Marshack, in his capacity as Chapter 7 T v. Rock Star Beverly

**#13.00 Plaintiff's Motion For Default Judgment
(cont'd from 10-15-20)**

Docket 47

***** VACATED *** REASON: RE-SCHEDULED TO 11-12-20 AT 2:00
P.M. PER COURT'S OWN MOTION)**

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

Plaintiff(s):

Richard A Marshack, in his capacity

Represented By
D Edward Hays
Tinho Mang

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**

Thursday, November 12, 2020

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#14.00 Trustee's Motion to Approve Settlement and Subordination Agreement with Remares Global, LLC and Global Approach, LLC
(cont'd from 10-15-20)

Docket 177

***** VACATED *** REASON: RE-SCHEDULED TO 11-12-20 AT 2:00 P.M. PER COURT'S OWN MOTION**

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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**

Thursday, November 12, 2020

Hearing Room 5B

11:00 AM

8:13-16402 Gentile Family Industries

Chapter 11

Adv#: 8:20-01126 GENTILE FAMILY INDUSTRIES v. Gentile, Sr. et al

#15.00 Motion For Order Dismissing Adversary Action For Failure To State A Claim Upon Which Relief Can Be Granted, Or In The Alternative, To Compel Arbitration

Docket 9

***** VACATED *** REASON: CONTINUED TO 1-28-2021 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION RE: REFERRAL OF
MATTER TO MEDIATION & RESCHEDULING DEFENDANTS'
MOTION TO DISMISS & (2) STATUS CONFERENCE ENTERED 10-22-
10**

Party Information

Debtor(s):

Gentile Family Industries

Represented By
Jeffrey W Broker

Defendant(s):

Philip J Gentile Sr.

Represented By
Richard H Golubow

Phillip J Gentile Jr.

Represented By
Richard H Golubow

Plaintiff(s):

GENTILE FAMILY INDUSTRIES

Represented By
Jeffrey W Broker

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

Thursday, November 12, 2020

Hearing Room 5B

2:00 PM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Richard A Marshack, in his capacity as Chapter 7 T v. Rock Star Beverly

#16.00 Plaintiff's Motion For Default Judgment
(cont'd from 10-15-20)
(re-scheduled from 11-12-20 at 11:00 a.m. to 2:00 p.m. per court's own mtn)

Docket 47

***** VACATED *** REASON: CONTINUED TO 11-17-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

Plaintiff(s):

Richard A Marshack, in his capacity

Represented By
D Edward Hays
Tinho Mang

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**

Thursday, November 12, 2020

Hearing Room

5B

2:00 PM

8:19-14912 Igor Shabanets

Chapter 7

#17.00 Trustee's Motion to Approve Settlement and Subordination Agreement with Remares Global, LLC and Global Approach, LLC
(cont'd from 10-15-20)
(re-scheduled from 11-12-20 at 11:00 to 2:00 p.m. per court's own mtn)

Docket 177

***** VACATED *** REASON: CONTINUED TO 11-17-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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**

Thursday, November 12, 2020

Hearing Room

5B

2:00 PM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01079 Remares Global, LLC, a Florida limited liability c v. Shabanets et al

#18.00 Motion for Summary Adjudication That : (1) Debtor's College 529 Savings Accounts are not Property of the Estate, (2) Remares Global, LLC ("Remares") Has a Lien on the 529 Funds, and (3) That Such Funds be Ordered Released to Remares

Docket 35

***** VACATED *** REASON: CONTINUED TO 11-17-20 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Pro Se

Olga Shabanets

Represented By
Bruce A Boice

Olga Shabanets, as trustee of the

Represented By
Bruce A Boice

Richard A Marshack

Represented By
D Edward Hays

Plaintiff(s):

Remares Global, LLC, a Florida

Represented By
Alan W Forsley

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**

Friday, November 13, 2020

Hearing Room 5B

10:00 AM

8:18-11185 Richard Ryan Farino

Chapter 7

Adv#: 8:18-01134 Hile v. Farino

#1.00 TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt pursuant to 11 U.S.C. Section 523(a)(2)(A) (set from p/t hrg held on 7-23-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-15-2021 AT 10:00 A.M.
PER ORDER GRANTING JOINT STIPULATION OF COUNSEL TO
CONTINUE THE TRIAL DATE ENTERED 11-06-20**

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**

Monday, November 16, 2020

Hearing Room 5B

10:00 AM

8:18-11185 Richard Ryan Farino

Chapter 7

Adv#: 8:18-01134 Hile v. Farino

#1.00 TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt pursuant to 11 U.S.C. Section 523(a)(2)(A) (set from p/t hrg held on 7-23-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-15-2021 AT 10:00 A.M.
PER ORDER GRANTING JOINT STIPULATION OF COUNSEL TO
CONTINUE THE TRIAL DATE ENTERED 11-06-20**

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**

Tuesday, November 17, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1619657863>

ZoomGov meeting number: 161 965 7863

Password: 902840

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Tuesday, November 17, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 17, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar

Tuesday, November 17, 2020

Hearing Room 5B

10:00 AM

8:20-11862 Hillary Sue Garwin

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**DAIMLER TRUST
Vs.
DEBTOR**

Docket 31

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY FILED 10-26-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hillary Sue Garwin

Represented By
Maria C Hehr

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 17, 2020

Hearing Room 5B

10:00 AM

8:20-12458 Sarah Elizabeth Reed

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY RE: 2017

**TOYOTA LEASE TRUST
Vs.
DEBTOR**

Docket 8

Tentative Ruling:

Tentative for 11/17/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Sarah Elizabeth Reed

Represented By
Leonard W Stitz

Movant(s):

Toyota Lease Trust, as serviced by

Represented By
Kirsten Martinez

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 17, 2020

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#3.00 Order To Show Cause Re: Extended Bar Date To Correct Lack Of Notice

Docket 0

Tentative Ruling:

Tentative for 11/17/20:

An order will issue extending claims bar date to December 31, 2020. Counsel is to coordinate with clerk's office to ensure proper notice is sent.

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 17, 2020

Hearing Room 5B

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

- #4.00** Stipulation Regarding Discovery Dispute (Post-Judgment Discovery and Judgment Debtor Examinations of Dr. Robert Amster, Robert Amster, M.D., Inc., and Your Neighborhood Urgent Care)
(cont'd from 11-12-20 per court's own mtn)

Docket 444

Tentative Ruling:

Tentative for 11/17/20:

This is a dispute over whether debtor has cooperated with a judgment debtor examination previously ordered by the court. The charge generally is that Dr. Amster refuses to give meaningful answers on basic questions and/or to produce documents under post judgment requests regarding such basic issues that such documents should exist and be under the judgment debtors' control. The court agrees the excerpts provided show a combative and uncooperative posture. The remedy sought is that the continued examination occur in open court and/or that a discovery referee be appointed. Regarding "open court" that might be a challenge inasmuch as presently during the pandemic no live sessions of court are normally conducted. Rather, this remedy would necessarily involve some kind of hearing on ZoomGov. This might be accommodated, one supposes, but surely the judgment creditor is not proposing that this court sit and observe the discovery attempts for hours at a time. Why a Zoom hearing would in that case be any better than a videotaped deposition is not explained. An alternative is mentioned; appointment of a discovery referee. But the court notes that FRCP Rule 53, which provides for appointment of special masters, is not applicable in bankruptcy under FRBP 9031. The court will hear argument as to whether this is a viable route. In any case the court will hear argument as to how a referee, if appointed, can expect payment of his/her fees, and by that is not meant simply issuing a bill to judgment debtors and hoping to receive its payment. Also, the question of monetary sanctions over and above the judgment should be briefed as well. The judgment debtors will be ordered to provide all requested documents by the deadline below, or provide a written statement explaining inability to produce them. Legalistic objections to

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 17, 2020

Hearing Room

5B

10:00 AM

CONT... **Hoag Urgent Care-Tustin, Inc.**

Chapter 7

production are deemed waived. All questions are to be answered without objection, or if a legitimate objection is to be interposed, it will be accompanied by a contemporaneous detailed explanation. The court will hold a follow-up hearing to evaluate whether sanctions should also be imposed.

Deadline for production of missing documents is December 31, 2020. Oral examination under oath to occur not later than January 30, 2021. Follow-up evaluation hearing February 4, 2021 @ 11:00 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):

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 17, 2020

Hearing Room 5B

10:00 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
Tiffany Payne Geyer

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, November 17, 2020

Hearing Room

5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

- #5.00** Trustee's Motion to Approve Settlement and Subordination Agreement with Remares Global, LLC and Global Approach, LLC
(cont'd from 10-15-20)
(re-scheduled from 11-12-20 at 11:00 to 2:00 p.m. per court's own mtn)
(cont'd from 11-12-20 at 2:00 p.m. per court's own mtn)

Docket 177

Tentative Ruling:

Tentative for 11/17/20:

This is the continued hearing on the Trustee's Motion to Approve a Compromise with creditor Remares. The court had tentatively ruled in favor of granting the compromise motion at the October 15 hearing. However, creditor Vibe Micro filed a very late objection and the court continued the hearing for further briefing. The Vibe Micro objection seems to mainly rely on a dubious reading of CCP §1710.50, which suggests, from its reading of subsection (a)(1), that a stay of enforcement goes into effect *automatically*. The court does not share this interpretation because, at the very least, the language suggests an order of some kind is the operative step. This portion of the statute reads:

(a) The court shall grant a stay of enforcement where:

- (1) An appeal from the sister state judgment is pending or may be taken in the state which originally rendered the judgment. Under this paragraph, enforcement shall be stayed until the proceedings on appeal have been concluded or the time for appeal has expired.

However, §1710.50 continues in subsection (c):

"[t]he court shall grant a stay of enforcement under this section on such terms and conditions as are just including but not limited to the

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CONT...

Igor Shabanets

Chapter 7

following: (1)The court may require an undertaking in an amount it determines to be just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim."

Remares takes this language to mean enforcement is not automatically stayed both because subsection (a) speaks of an order or "grant" and further because the court has discretion to add its own conditions. This position appears to be supported by caselaw, including *Magalnick v. Magalnick*, 98 Cal. App. 3d 753 (1979), and *Blizzard Energy, Inc. v. Schaefers*, 44 Cal. App. 5th 295 (2020). In *Magalnick*, the court observed:

"[W]hile it is true the clerk of the court is required to enter judgment merely upon the filing of an application therefor under Code of Civil Procedure sections 1710.15 and 1710.25... no writ of execution generally may issue until the judgment creditor has served upon his debtor a notice of entry of the judgment, which service itself likewise affords the debtor an opportunity to move for the judgment's vacation." *Magalnick*, 98 Cal. App. 3d at 757-58.

In *Blizzard*, the court of appeal found no abuse of discretion where the Superior Court required the posting of a bond for a stay pending appeal of a sister-state judgment. *Blizzard*, 44 Cal. App. 5th at 299. The underlying judgment was for, *inter alia*, fraud, and when the bond was not posted, no stay was granted. *Id.* Accordingly, the Superior Court's ruling was affirmed. *Id.* at 300.

Remares also argues that, although Vibe Micro did not raise this point, CCP § 1710.45(a) does automatically stay enforcement *for the first 30 days* after service of the notice of entry of judgment unless a party seeks court permission to enforce its judgment. However, here, through an *ex parte* application, Remares requested and obtained a state court order allowing it to record its abstract during the 30-day period. Thus, as Remares recorded its abstract pursuant to a state court order, it likely has a valid and enforceable

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CONT... **Igor Shabanets**
lien on the 2 Monarch property.

Chapter 7

Debtor also filed a late opposition, which argues that the *A&C Properties* factors weigh against granting the motion largely because 2 Monarch was transferred to the Irrevocable Trust, which would make it not property of the estate. Remares asserts, likely correctly, that the Motion should be granted over Debtor's opposition because Debtor provided no admissible evidence that 2 Monarch was transferred to the Irrevocable Trust. The main evidence offered is in the form of the declaration of Mr. Thomas Parker. However, as Remares' evidentiary objections point out, Mr. Parker's declaration appears to be riddled with hearsay, and lacking substantially in foundation. With little or no evidence to support his position, Debtor has not demonstrated that the settlement is not in the best interests of the Estate. Moreover, Remares argues, if the Irrevocable Trust genuinely claimed an interest in 2 Monarch, it should have intervened in the fraudulent transfer adversary matter, and Debtor does not have standing to assert claims of the Irrevocable Trust. Furthermore, the court simply disagrees that the *A&C Properties* factor preponderate against the compromise. Debtor again is trying to control property, or influence the outcome of property, which he paradoxically claims is not part of his estate. Meanwhile, Remares reports that Debtor continues to live at 2 Monarch while not paying 2 Monarch's mortgage, property taxes, insurance, or homeowner association fees. This is eroding the equity in 2 Monarch which could go to the Estate or a creditor such as Remares. Remares argues that if the Motion is granted, the Chapter 7 Trustee will be able to resolve two adversary matters saving the Estate much in attorney's fees and can then sell 2 Monarch to stop the equity from being further eroded and to bring monies to the Estate. Trustee echoes Remares' arguments. Debtor did not file any reply to either Remares or Trustee. It likely would not matter, in any case, because Debtor is unlikely to be able to argue around both the standing and lateness problems, and in fact, Debtor does not even attempt to establish his standing to oppose the motion, nor does he offer any explanation for tardiness of the opposition. In sum,

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CONT... Igor Shabanets

Chapter 7

Remares' and Trustee's positions appear to be well-supported.

Grant

Tentative for 10/15/20:

Grant. Movant to submit order. Appearance optional.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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
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Tuesday, November 17, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01023 Richard A Marshack, in his capacity as Chapter 7 T v. Rock Star Beverly

#6.00 Plaintiff's Motion For Default Judgment
(cont'd from 10-15-20)
(re-scheduled from 11-12-20 at 11:00 a.m. to 2:00 p.m. per court's own mtn)
(cont'd from 11-12-10 at 2:00 p.m. per court's own mtn)

Docket 47

Tentative Ruling:

Tentative for 11/17/20:
Grant. Appearance is optional.

Tentative for 10/15/20:
Grant. Appearance optional.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Rock Star Beverly Hills LLC

Pro Se

Igor Shabanets

Pro Se

Plaintiff(s):

Richard A Marshack, in his capacity

Represented By
D Edward Hays
Tinho Mang

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
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CONT... Igor Shabanets

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, November 17, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01079 Remares Global, LLC, a Florida limited liability c v. Shabanets et al

#7.00 Motion For Summary Judgment Motion for Summary Adjudication That : (1) Debtor's College 529 Savings Accounts are not Property of the Estate, (2) Remares Global, LLC ("Remares") Has a Lien on the 529 Funds, and (3) That Such Funds be Ordered Released to Remares
(cont'd from 11-12-20 per court's own mtn)

Docket 35

Tentative Ruling:

Tentative for 11/17/20:

The motion appears to be unopposed. It will therefore be granted.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Pro Se

Olga Shabanets

Represented By
Bruce A Boice

Olga Shabanets, as trustee of the

Represented By
Bruce A Boice

Richard A Marshack

Represented By
D Edward Hays

Plaintiff(s):

Remares Global, LLC, a Florida

Represented By
Alan W Forsley

Trustee(s):

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT...

Igor Shabanets

D Edward Hays

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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1:30 PM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1604138430>

ZoomGov meeting number: 160 413 8430

Password: 216630

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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Wednesday, November 18, 2020

Hearing Room 5B

1:30 PM

8:20-12214 Javier Antonio Sosa

Chapter 13

#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 10-21-20)

Docket 10

Tentative Ruling:

Tentative for 11/18/20:

The Trustee and MAMAD correctly observe that on the secured claim maturing before the term of the plan, merely curing arrearages is unavailable but rather the whole of the claim must be paid. This also raises big feasibility questions. Also, the plan does not provide for all creditors as observed by the Trustee.

Appearance required.

Tentative for 10/21/20:

The proper amount of arrearages on the MAMAD claim must be given in the plan. Other deficiencies as noted by the trustee must also be met.

Appearance is required.

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 18, 2020

Hearing Room 5B

1:30 PM

8:20-12333 Joann Carolyn Stran

Chapter 13

**#2.00 Conifrmaiton Of Chapter 13 Plan
(Cont'd from 10-21-20)**

Docket 13

Tentative Ruling:

Tentative for 11/18/20:
Still no response to Trustee's objections?

Party Information

Debtor(s):

Joann Carolyn Stran

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Wednesday, November 18, 2020

Hearing Room 5B

1:30 PM

8:20-12416 Michele Lynn Stover

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 10-21-20)**

Docket 2

Tentative Ruling:

Tentative for 11/18/20:
Trustee's comments must be addressed.

Appearance required.

Tentative for 10/21/20:
Continue as needed to deal with items in the trustee's objection if payments
are current. Appearance is required.

Party Information

Debtor(s):

Michele Lynn Stover

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 1675 Calendar**

Wednesday, November 18, 2020

Hearing Room 1675

1:30 PM

8:20-12456 Seth Michael Carreon

Chapter 7

#4.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE CONVERTED
TO CHAPTER 7 ON 9-14-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Seth Michael Carreon

Represented By
Christopher J Langley

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 1675 Calendar**

Wednesday, November 18, 2020

Hearing Room 1675

1:30 PM

8:20-12509 Jane Kraus

Chapter 13

#5.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 11/18/20:

The court relies upon counsel's reading on the question of whether the missing tax returns were in fact ones necessarily filed. But if they are not required to be filed because of debtor's very low income, the remaining issues raised by the trustee are not persuasive. The fact that minimal yield is to be given to the lone unsecured non priority creditor, or that the bulk of payments are actually going to the attorney, are, absent other factors not present here, not by themselves reason to deny confirmation. If mechanically a destination for the payments needs to be established the court presumes either the debtor or the trustee will avail of Rule 3004. The court sees no bad faith and the issue of Chapter 13s not involving a second discharge has already been resolved in favor of the debtor. See *In re Boukatch*.

Appearance: optional.

Party Information

Debtor(s):

Jane Kraus

Represented By
Joseph A Weber

Movant(s):

Jane Kraus

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 18, 2020

Hearing Room 5B

1:30 PM

8:20-12575 Hilarion Lopez

Chapter 13

#6.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - ORDER & NOTICE
OF DFISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS
AND/OR PLAN ENTERED 10/02/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hilarion Lopez

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 1675 Calendar**

Wednesday, November 18, 2020

Hearing Room 1675

1:30 PM

8:20-12615 Fernan Edgardo Lozano

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 11/18/20:

It would seem that a resolution of the Trustee's objection to the variety of claimed exemptions must be had before the court can evaluate whether the 'best interest of creditors' test is met. Continue?

Appearance: required.

Party Information

Debtor(s):

Fernan Edgardo Lozano

Represented By
Julie J Villalobos

Movant(s):

Fernan Edgardo Lozano

Represented By
Julie J Villalobos
Julie J Villalobos
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 18, 2020

Hearing Room 5B

1:30 PM

8:20-12633 Elisabeth Helen Sylvia

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 11/18/20:

Party Information

Debtor(s):

Elisabeth Helen Sylvia

Represented By
Kevin J Kunde

Movant(s):

Elisabeth Helen Sylvia

Represented By
Kevin J Kunde
Kevin J Kunde
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
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Wednesday, November 18, 2020

Hearing Room 5B

1:30 PM

8:20-12663 Charles Aungkhin

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

Tentative for 11/18/20:
Without suitable response to the Trustee's and creditor's objection
confirmation cannot be granted.

Appearance: required.

Party Information

Debtor(s):

Charles Aungkhin

Represented By
Scott Kosner

Movant(s):

Charles Aungkhin

Represented By
Scott Kosner
Scott Kosner

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

8:16-10620 Rosalie Abad Naval

Chapter 13

**#10.00 Trustee's Motion to Dismiss Case Due to Material Default of a Plan Provision
(cont'd from 10-21-20)**

Docket 94

Tentative Ruling:

Tentative for 11/18/20:
Mooted by #11?

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Rosalie Abad Naval

Represented By
Brian J Soo-Hoo

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

8:16-10620 Rosalie Abad Naval

Chapter 13

#11.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 98

Tentative Ruling:

Tentative for 11/18/20:

Has Trustee accepted explanation given in debtor's declaration?

Appearance: required.

Party Information

Debtor(s):

Rosalie Abad Naval

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, November 18, 2020

Hearing Room 5B

3:00 PM

8:16-13415 Todd Eric Szkotnicki and Lori Lynn Szkotnicki

Chapter 13

#12.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))

Docket 76

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 11-10-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Todd Eric Szkotnicki

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Lori Lynn Szkotnicki

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

8:17-10907 Miguel Medina

Chapter 13

#13.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 68

Tentative Ruling:

Tentative for 11/18/20:

Grant absent current status or modification motion on file.

Party Information

Debtor(s):

Miguel Medina

Represented By
Amanda G Billyard
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
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Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

8:17-14634 Kirk P Howland

Chapter 13

#14.00 Trustee's Motion To Dismiss Case FailureTo Make Plan Payments.

Docket 103

Tentative Ruling:

Tentative for 11/18/20:
Grant absent current status or modification motion on file.

Appearance: optional.

Party Information

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**

Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

#15.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 10-21-20)

Docket 100

Tentative Ruling:

Tentative for 11/18/20:
Grant absent current status or modification motion on file.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

8:18-11474 Brian G. Corntassel

Chapter 13

**#16.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 10-21-20)**

Docket 87

Tentative Ruling:

Tentative for 11/18/20:
Continue to coincide with modification motion December 16.

Tentative for 10/21/20:
Grant unless motion to modify on file. Appearance is optional.

Party Information

Debtor(s):

Brian G. Corntassel

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
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Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

8:18-13016 Philip Q Dowsing

Chapter 13

**#17.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 10-21-20)**

Docket 45

Tentative Ruling:

Tentative for 11/18/20:
Grant unless current. Appearance is optional.

Tentative for 10/21/20:
Grant unless current. Appearance is optional.

Party Information

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
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Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

8:18-13352 Chales Drew Simpson and June P Simpson

Chapter 13

**#18.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 10-21-20)**

Docket 65

Tentative Ruling:

Tentative for 11/18/20:

Is this mooted by modification order entered November 10?

Appearance: optional.

Tentative for 10/21/20:

Debtor must either be current or must be responsive to the trustee's comments on the modification motion (see #29). Appearance is required.

Tentative for 9/16/20:

Continue to coincide with modification motion 10/21.

Tentative for 8/19/20:

Grant unless current or modification motion on file.

Tentative for 7/15/20:

Same. Appearance is optional.

Tentative for 6/17/20:

Grant unless completely current. Appearance is optional.

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, November 18, 2020

Hearing Room 5B

3:00 PM

CONT... Chales Drew Simpson and June P Simpson

Chapter 13

Tentative for 4/15/20:
Grant unless current or modification motion on file. Appearance is optional.

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
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Santa Ana
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3:00 PM

8:18-13352 Chales Drew Simpson and June P Simpson

Chapter 13

**#19.00 Debtor's Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments
(cont'd from 10-21-20)**

Docket 78

Tentative Ruling:

Tentative for 11/18/20:
Is this resolved by order entered November 10?

Appearance: optional.

Tentative for 10/21/20:
Debtor must respond to trustee's comments. Appearance is optional.

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
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Hearing Room 5B

3:00 PM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

**#20.00 Verified Motion for Order Dismissing Chapter 13 Proceeding
(11 U.S.C. - 1307(c))
(cont'd from 10-21-20)**

Docket 78

Tentative Ruling:

Tentative for 11/18/20:
Mooted by order entered November 5?

Appearance: optional.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

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, November 18, 2020

Hearing Room 5B

3:00 PM

8:18-14134 Lam Dang Nguyen

Chapter 13

#21.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 35

Tentative Ruling:

Tentative for 11/18/20:
Grant absent current status or modification motion on file.

Appearance: optional.

Party Information

Debtor(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, November 18, 2020

Hearing Room 5B

3:00 PM

8:19-10832 Luke Shane Wendel

Chapter 13

#22.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 10-21-20)

Docket 45

Tentative Ruling:

Tentative for 11/18/20:
See #23.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

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, November 18, 2020

Hearing Room

5B

3:00 PM

8:19-10832 Luke Shane Wendel

Chapter 13

#23.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments

Docket 49

Tentative Ruling:

Tentative for 11/18/20:

Trustee's comments must be addressed or the motion is denied.

Appearance: required.

Party Information

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, November 18, 2020

Hearing Room 5B

3:00 PM

8:19-11082 Juan Melendez and Susana Melendez

Chapter 13

**#24.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 10-21-20)**

Docket 51

Tentative Ruling:

Tentative for 11/18/20:
Mooted by order entered November 10?

Appearance: optional.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Juan Melendez

Represented By
Sundee M Teeple

Joint Debtor(s):

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, November 18, 2020

Hearing Room 5B

3:00 PM

8:19-11475 Donald A. Shorman, Jr. and Lorraine D. Shorman

Chapter 13

**#25.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 10-21-20)**

Docket 35

Tentative Ruling:

Tentative for 11/18/20:
Grant absent current status or modification motion on file.

Appearance: optional.

Tentative for 10/21/20:
Did modification by order 10/05/20 fix this? Appearance is optional.

Tentative for 9/16/20:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Donald A. Shorman Jr.

Represented By
Tina H Trinh

Joint Debtor(s):

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, November 18, 2020

Hearing Room 5B

3:00 PM

8:19-12157 Harmony Catrina Alves

Chapter 13

**#26.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 10-21-20)**

Docket 46

Tentative Ruling:

Tentative for 11/18/20:
Mooted by order entered November 10?

Appearance: optional.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(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 18, 2020

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#27.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 69

Tentative Ruling:

Tentative for 11/18/20:
Continue to coincide with modification motion filed November 3.

Appearance: optional

Party Information

Debtor(s):

Wendie Lorraine Brigham

Represented By
Christopher J Langley
Michael Smith

Trustee(s):

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 18, 2020

Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

#28.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 10-21-20)

Docket 68

Tentative Ruling:

Tentative for 11/18/20:
Continue to December 16 to coincide with modification motion.

Appearance: optional.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(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 18, 2020

Hearing Room 5B

3:00 PM

8:17-10327 Brian Floyd

Chapter 13

#29.00 Debtor's Motion For Authority To Sell Real Property

Docket 49

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION TO SELL REAL PROPERTY ENTERED 10-30-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Floyd

Represented By
Yelena Gurevich

Trustee(s):

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 18, 2020

Hearing Room 5B

3:00 PM

8:17-12477 Geraldine Arguelles

Chapter 13

#30.00 Motion For Order Disallowing Claim #6 By Ann Messenger

Docket 128

Tentative Ruling:

Tentative for 11/18/20:
Sustain. Appearance is optional.

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 19, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1603932707>

ZoomGov meeting number: 160 393 2707

Password: 744454

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 19, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 19, 2020

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

- #1.00** TRIAL 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 p/c hrg held on 12-19--19)
(re-scheduled from 2-20-20 per court's own mtn)
(cont'd from 6-15-20 per court own mtn)
(cont'd from 9-14-20 per court's own mtn)**

Docket 1

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
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, November 19, 2020

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, November 19, 2020

Hearing Room 5B

10:00 AM

8:18-13894 Daniel J Powers and Ellen A Powers

Chapter 13

**#2.00 Debtor's Objection To Claim 5-2 Submitted By Alamitos Real Estate Partners II, LP
(cont'd from 6-15-20)
(cont'd from 9-14-20)**

Docket 71

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**

Tuesday, December 1, 2020

Hearing Room 5B

10:30 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

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Video/audio web address:

<https://cacb.zoomgov.com/j/1600006230>

ZoomGov meeting number: 160 000 6230

Password: 061179

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
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- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

10:30 AM

8:19-14941 LeAnn Michelle Gause and Tiffany Denise Gause

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SCHOOLSFIRST FEDERAL CREDIT UNION
Vs.
DEBTORS

Docket 36

Tentative Ruling:

Tentative for 12/1/20:
Grant. Appearance optional.

Party Information

Debtor(s):

LeAnn Michelle Gause

Represented By
Christopher J Langley

Joint Debtor(s):

Tiffany Denise Gause

Represented By
Christopher J Langley

Movant(s):

SchoolsFirst Federal Credit Union

Represented By
Paul V Reza

Trustee(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 1, 2020

Hearing Room 5B

10:30 AM

8:19-14941 LeAnn Michelle Gause and Tiffany Denise Gause

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

SCHOOLSFIRST FEDERAL CREDIT UNION
Vs.
DEBTORS

Docket 37

Tentative Ruling:

Tentative for 12/1/20:
Grant absent post-petition current status or APO.

Party Information

Debtor(s):

LeAnn Michelle Gause

Represented By
Christopher J Langley

Joint Debtor(s):

Tiffany Denise Gause

Represented By
Christopher J Langley

Movant(s):

SchoolsFirst Federal Credit Union

Represented By
Paul V Reza

Trustee(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 1, 2020

Hearing Room 5B

10:30 AM

8:20-10391 Elycia M. Myers

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**CAPITAL ONE AUTO FINANCE
Vs.
DEBTOR**

Docket 53

Tentative Ruling:

Tentative for 12/1/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Elycia M. Myers

Represented By
Timothy McFarlin

Movant(s):

Capital One Auto Finance, a division

Represented By
Marjorie M Johnson

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

10:30 AM

8:16-13829 Diana Solis

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 10-27-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 72

Tentative Ruling:

Tentative for 12/1/20:
Same. Appearance is optional.

Tentative for 10/27/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Diana Solis

Represented By
Bryn C Deb

Movant(s):

U.S. Bank National Association, as

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, December 1, 2020

Hearing Room 5B

10:30 AM

8:18-10808 Jack Dennis Mitchell and Kathleen Marie Mitchell

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 10-13-20)**

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTORS**

Docket 54

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION ORDER GRANTING MOTION FOR RELIEF FROM THE
AUTOMATIC STAY REAL PROPERTY ENTERED 11-20-20**

Tentative Ruling:

Tentative for 10/13/20:
Grant absent APO or current post confirmation status.

Party Information

Debtor(s):

Jack Dennis Mitchell

Represented By
Nicholas M Wajda

Joint Debtor(s):

Kathleen Marie Mitchell

Represented By
Nicholas M Wajda

Movant(s):

U.S. Bank National Association

Represented By
Eric P Enciso

Trustee(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 1, 2020

Hearing Room 5B

10:30 AM

8:18-13515 Alan Joseph Copeland and Judith Ann Copeland

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 10-20-20)**

**FORETHOUGHT LIFE INSURANCE COMPANY
Vs
DEBTORS**

Docket 36

Tentative Ruling:

Tentative for 12/1/20:
Grant absent current post petition status or APO.

Appearance is optional.

Tentative for 10/20/20:
Same as before. Appearance is optional.

Tentative for 9/22/20:
Grant absent stipulation to APO. Appearance is optional.

Party Information

Debtor(s):

Alan Joseph Copeland

Represented By
Steven A Alpert

Joint Debtor(s):

Judith Ann Copeland

Represented By
Steven A Alpert

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

10:30 AM

CONT... Alan Joseph Copeland and Judith Ann Copeland

Chapter 13

Movant(s):

Forethought Life Insurance

Represented By
Daniel K Fujimoto

Trustee(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 1, 2020

Hearing Room 5B

10:30 AM

8:19-12629 Eduardo Meza

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

**SELECT PORTFOLIO SERVICING, INC.
Vs.
DEBTOR**

Docket 104

Tentative Ruling:

Tentative for 12/1/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Eduardo Meza

Represented By
Michael F Chekian

Movant(s):

CSMC 2018-RPL11 Trust

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, December 1, 2020

Hearing Room 5B

10:30 AM

8:19-10693 Manuel Rex Alarcon and Nancy Louise Richardson

Chapter 13

#8.00 Motion for Adequate Protection , or in the Alternative, Relief from Automatic Stay
(cont'd from 10-27-20)

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTORS**

Docket 52

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 11-19-20**

Tentative Ruling:

Tentative for 10/27/20:
Same tentative as before, grant absent APO. Appearance is optional.

Tentative for 9/22/20:
Grant absent APO. Appearance is optional.

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):

Deutsche Bank National Trust

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

10:30 AM

CONT... Manuel Rex Alarcon and Nancy Louise Richardson
Merdaud Jafarnia
Nancy L Lee

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, December 1, 2020

Hearing Room 5B

11:00 AM

8:20-12060 Marlene D Mejia Rosales and Gilmar Leopoldo Garcia

Chapter 7

#9.00 Motion To Dismiss Chapter 7 Case With 180 Day Bar To Refiling As To Gilmar Leopoldo Garcia Marroquin Only Pursuant To 11 USC Section 707(b)(3)(A), 105(a), 109(g), And 349

Docket 18

Tentative Ruling:

Tentative for 12/1/20:
Granted with 180-day bar.

Party Information

Debtor(s):

Marlene D Mejia Rosales

Represented By
Lauren M Foley

Joint Debtor(s):

Gilmar Leopoldo Garcia Marroquin

Represented By
Lauren M Foley

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 1, 2020

Hearing Room 5B

11:00 AM

8:18-10064 Skin Care Solutions, LLC

Chapter 7

#10.00 Trustee's Final Report And Applications For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

GOE FORSYTHE & HODGES LLP, ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CH 7 TRUSTEE

Docket 49

Tentative Ruling:

Tentative for 12/1/20:
Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

Skin Care Solutions, LLC

Represented By
Jeffrey D Cawdrey

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 1, 2020

Hearing Room 5B

11:00 AM

8:19-12320 John Gerard Bolduc

Chapter 7

#11.00 Trustee's Final Report And Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

MALCOLM CISNEROS, CHAPTER 7 TRUSTEE'S ATTORNEY

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

Docket 72

Tentative Ruling:

Tentative for 12/1/20:
Allow as prayed. Appearance is optional.

Party Information

Debtor(s):

John Gerard Bolduc

Represented By
Kevin J Kunde

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#12.00 Motion for Order Approving Stipulation Between Estate and LoanCare, LLC For Relief From Stay

Docket 803

Tentative Ruling:

Tentative for 12/1/20:
Grant. Appearance optional.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

11:00 AM

8:19-14600 Consumer Financial Alliance LLC

Chapter 7

#13.00 Chapter 7 Trustee's Motion For An Order Compelling Thomas J. Lynch Pursuant To 11 U.S.C. Section 542 To: (1) Turnover Property Of The Estate; And (2) Provide An Accounting Of All Funds Received PostPetition (cont'd from 11-10-20 per order approving stip. to cont. hrg entered 10-30-20)

Docket 48

Tentative Ruling:

Tentative for 12/1/20:

If trustee confirms \$1,800 has been turned over, deny. Appearance optional.

Party Information

Debtor(s):

Consumer Financial Alliance LLC

Represented By
Krystina T Tran

Trustee(s):

Thomas H Casey (TR)

Represented By
Krystina T Tran

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#14.00 Debtor's Motion to Convert Case From Chapter 7 to 11.
(cont'd from 10-27-20 per order on stip. re: the cont. joint hrg. on the trustee's mtn to sell and the defendant's mtn to convert entered 10-01-20)

Docket 122

***** VACATED *** REASON: CONTINUED TO 2-02-21 AT 11:00 A.M.
PER ORDER ON STIPULATED REQUEST REGARDING THE
CONTINUED HEARING ON THE DEBTOR'S MOTION TO CONVERT
ENTERED 11-17-20**

Tentative Ruling:

Tentative for 9/22/20:

The problem with this motion is that it is completely unsupported by any evidence. At most the declarations attest to a desire to explore a Chapter 11 plan but absolutely no details are given as to how that might be accomplished. It is also obvious that the conversion attempt is connected to the Trustee's motion to sell assets (see #12), so it would appear that the real motivation for this conversion attempt is to frustrate/block the Trustee's sale motion or other efforts to liquidate. While the court always prefers the good faith attempts of debtors to reorganize, this should not be mistaken for naivete. The Marrama case makes abundantly clear that good faith is a necessary prerequisite to conversion into a reorganization chapter. Such inquiry is heightened when it looks like a ploy to evade the trustee. Debtor might have made a closer case if she had given even the most basic explanation of just how she would manage this reorganization at this late date, and no idle promise of 120%+ or other of the moon and stars can convince under these circumstances, where concrete facts are what is needed.

Deny.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer
Michael Jones

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Chapter 7

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, December 1, 2020

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

- #15.00 Trustee's Motion For Order: Authorizing Sale Of Litigation Rights (A) Outside The Ordinary Course Of Business; (B) Free And Clear Of Liens; (C) Subject To Overbids; And (D) For Determination Of Good Faith Purchaser Under Section 363(M)
(cont'd from 10-27-20 per order on stip. re: the cont. joint hrg. on the trustee's mtn to sell and the defendant's mtn to convert entered 10-01-20)

Docket 117

Tentative Ruling:

Tentative for 9/22/20:

The court had two concerns regarding this motion: (1) what is that is proposed to be sold, precisely described?, and (2) if the assets sold include trustee's avoidance powers under §§544, 547, 548 or 549, would the buyer have standing to pursue the actions post sale? On the second question there seems to be adequate authority in the Ninth Circuit supporting a conclusion that prudential standing would exist since, indisputably, creditors do benefit from the price, although the issue could have been more clear had there been a promised "rebate" of some portion of any proceeds to ensure that creditors got paid in full if, after administrative claims, the price is not sufficient to take out all unsecured claims. *See Brookview Apts., LLC v. Hoer (In re Weigh)*, 576 B.R. 189, 205-06 (Bankr. C.D. Cal. 2017) citing *Duckor Spradling & Metzger v. Baum (In re P.R.T. C. Inc.)*, 177 F. 3d 774, 780-82 (9th Cir. 1999). But the first question remains. The description is vague in that inclusion of all rights of action, including trustee avoidance actions, is only one possible interpretation. From what is outlined in the motion it looks like the proposed actions would be in the nature of avoiding certain transactions as fraudulent conveyances, and possibly another as a post-petition transfer (honoring of a check post-petition), but the language used in the motion is susceptible to interpretation. The court will hear argument but is inclined to continue for clarification on this point, and possible re-noticing.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 1, 2020

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Chapter 7

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

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**

Wednesday, December 2, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1606940341>

ZoomGov meeting number: 160 694 0341

Password: 042876

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:12-23407 Joel J Spinosi

Chapter 11

#1.00 Motion by Reorganized Debtor for Entry of Discharge

Docket 236

***** VACATED *** REASON: CONTINUED TO 1-06-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION RE: CONTINUANCE OF
HEARING ON MOTION BY REORGANIZED DEBTOR FOR ENTRY OF
DISCHARGE ENTERED 11-30-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joel J Spinosi

Represented By
M. Jonathan Hayes
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room

5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#2.00 CONT Scheduling and case management conference

[from: 4/25/14, 5/8/14, 6/4/14, 7/2/14, 7/30/14, 9/3/14, 10/22/14, 11/20/14, 12/17/14, 2/18/15, 7/8/15, 10/7/15, 12/16/15, 12/23/15, 1/13/16, 2/10/16, 6/22/16, 9/28/16, 11/22/16, 12/7/16, 3/1/17, 6/21/17, 6/28/17, 8/30/17, 9/7/17, 11/1/17, 1/31/18, 3/28/18, 8/1/18, 8/15/18, 11/7/18, 3/13/19, 9/11/19, 12/11/19, 6/3/20]

Docket 1

Tentative Ruling:

Tentative for 12/2/20:
Why no status report?

No appearances necessary. The hearing will be continued to December 2, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Plaza Healthcare Center LLC

Represented By
Ron Bender
Lindsey L Smith
Krikor J Meshefejian
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room

5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#3.00 CONT Motion for entry of final decrees closing Debtors Chapter 11 cases

[fr: 12/13/17, 3/28/18, 8/1/18, 11/7/18, 3/13/19, 9/11/19, 12/11/19, 6/3/20]

Docket 2630

***** VACATED *** REASON: CONTINUED TO 6-09-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION FOR ENTRY OF FINAL DECREE CLOSING DEBTORS'
CHAPTER 11 CASES ENTERED 11-30-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Plaza Healthcare Center LLC

Represented By

Ron Bender
Lindsey L Smith
Krikor J Meshefejian
Monica Y Kim
Kurt Ramlo
Michelle S Grimberg
Philip A Gasteier
Jacqueline L James
Beth Ann R Young

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room

5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#4.00 CONT Motion to strike by Shlomo Rechnitz

[fr: 8/1/18, 8/15/18, 11/7/18, 3/13/19, 9/11/19, 12/11/19, 6/3/20]

Docket 2652

***** VACATED *** REASON: CONTINUED TO 6-09-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION ENTERED 11-17-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Plaza Healthcare Center LLC

Represented By

Ron Bender

Lindsey L Smith

Krikor J Meshefejian

Monica Y Kim

Kurt Ramlo

Michelle S Grimberg

Philip A Gasteier

Jacqueline L James

Beth Ann R Young

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:20-12856 1875 N Palm Canyon Partners II, LLC

Chapter 11

#5.00 Status Conferene Re: Chapter 11 Voluntary Petition Non-Individual. LLC

Docket 1

Tentative Ruling:

Tentative for 12/2/20:
Why no status report?

Party Information

Debtor(s):

1875 N Palm Canyon Partners II,

Represented By
Edmond Richard McGuire

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:20-12881 Stonewood Homes LLC

Chapter 11

#6.00 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

***** VACATED *** REASON: OFF CALENDAR - THIS CASE HAS
BEEN REASSIGNED TO JUDGE ERITHE SMITH ON 10-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stonewood Homes LLC

Represented By
William J King

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:14-12267 Satinder Mohan Uppal

Chapter 11

#7.00 Motion To Avoid Junior Liens And Tax Lien With Federal Deposit Corporation as Successor to La Jolla Bank, FSB, JMD Forever, LLC and the Franchise Tax Board

Docket 207

Tentative Ruling:

Tentative for 12/2/20:
Grant.

Party Information

Debtor(s):

Satinder Mohan Uppal

Represented By
Michael G Spector
Vicki L Schennum
Michael G Spector
T Randolph Catanese

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room

5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

#8.00 First and Final Application for Allowance of Fees and Costs For Period:
10/18/2018 to 11/11/2020:

**MARSHACK HAYS LLP AS FORMER SPECIAL COUNSEL FOR
DISBURSING AGENT:**

FEE: \$61,427.00

EXPENSES: \$1,627.01

Docket 765

Tentative Ruling:

Tentative for 12/2/20:

There does not appear to be objection to allowance of the amounts requested. The dispute goes only to payment in view of possible administrative insolvency. This is a case with a confirmed Chapter 11 plan so it does not appear that there is any discrepancy in priority, with all allowed fees of the same priority, i.e. Chapter 11 administrative. The problem arises in that some of the fees awarded to SWE and the Rosenberg firm are on appeal to the Ninth Circuit. Moreover, yet more fees may be incurred in execution of the plan in amounts unknown. Consequently, the fees and costs requested in this application are allowed and the plan agent is authorized to partially disburse as much of the allowed amounts as in his discretion he determines can be prudently and safely paid without resulting in unbalanced payments among all administrative claimants holding allowed claims if/when funds are ultimately exhausted. He may use as a guideline what has previously been actually paid in the course of the case as a percentage of what has been previously allowed (although appealed), and apply that percentage to the newly allowed fees. This is a guideline only and the court relies upon the plan agent to make any adjustments resulting in lower payment as will afford a reasonable cushion against anticipated further allowed fees.

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

CONT... Long-Dei Liu

Chapter 11

Party Information

Debtor(s):

Long-Dei Liu

Represented By

Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon
Kyra E Andrassy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#9.00 Plan Confirmation Hearing Re:Plan Of Reorganization
(cont'd from 10-07-20 per order apprvg. stip. to cont. the hrg on
confirmation of debtor's ch 11 plan entered 9-18-20)

Docket 342

***** VACATED *** REASON: CONTINUED TO 3-03-21 AT 10:00 A.M.
PER ORDER APPROVING SECOND STIPULATION TO CONTINUE
THE HEARING ON CONFIRMATION OF DEBTOR'S CHAPTER 11
ENTERED 11-17-20**

Tentative Ruling:

Tentative for 6/24/20:

The U.S. Trustee's objection was not timely, but Debtor still responded. So, the court will assume away the procedural issues. In response to the UST's objection: Debtor filed an amended plan (mistakenly entered as an amended disclosure statement) on June 16. Debtor also filed a separate response directly addressing the concerns identified in the UST's objection. This response includes additional proposed language that, if ultimately adopted into the plan, would likely address the UST's comments. As of this writing on (6/24), the UST has not filed anything further. No other interested party has filed a response of any kind to the DS.

The DS itself is not particularly user friendly as it does not have a table of contents, nor any accompanying brief to make the document easily navigable. Furthermore, while most of the required disclosures can be found in some form in the DS, it seems to be missing background information such as Debtor's financial history and events leading up to filing the petition. The DS has several exhibits: but the exhibits lack explanations of what they are and how they fit into the proposed plan of reorganization.

Debtor states that all disputes have been resolved, aside from the IRS and Citizens Bank Claims, which the newly added language in the proposed plan purports to address. Debtor states that the plan will pay 100% of the allowed creditor claims. When the UST commented on the DS, the court very likely would have found the DS to have inadequate information. The proposed

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, December 2, 2020

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5B

10:00 AM

CONT... **Ron S Arad**

Chapter 11

additional language would, if ultimately adopted, likely satisfy the UST's concerns, and the court's.

Although the DS could benefit from additional background information about Debtor's case: it may not be necessary. However, the new proposed language should be integrated into the DS. In sum: Debtor's DS is not an easy document to navigate and has some technical Deficiencies, but likely nothing fatal. The UST's objection has been addressed, though the UST may not have had an opportunity to review the proposed changes. No other party in interest has objected or opposed the DS. If the UST does not comment further before the hearing, the DS can likely be approved.

Conditionally approve.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

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, December 2, 2020

Hearing Room

5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

- #10.00** 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 10-7-2020 per order entered 10-06-20)

Docket 1

Tentative Ruling:

Tentative for 12/2/20:
Status?

Tentative for 6/24/20:
Would the parties prefer this be set for pretrial conference now, or continued as a status conference allowing a second attempt at mediation?

Tentative for 2/26/20:
Status? Would ordered mediation help?

Tentative for 12/11/19:
Further status report is needed. For example, IRS is still a defendant.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Tentative for 9/11/19:
Off calendar? See #9

Tentative for 9/4/19:
Does #7 resolve this?

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.

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, December 2, 2020

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Defendant(s):

DEPARTMENT OF THE

Pro Se

UNITED STATES OF AMERICA

Represented By
Jolene Tanner

Plaintiff(s):

Ron S Arad

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#11.00 Motion For Approval Of Chapter 11 Disclosure Statement

Docket 151

Tentative Ruling:

Tentative for 12/2/20:

This disclosure statement has major issues and cannot be approved in its current form, and Debtor seems to acknowledge that at least some amendment is required. For example, Debtor concedes that the issues with the descriptions of the classes and Exhibit C's projections as flagged by the UST probably require further attention.

Regarding the absolute priority rule, both the U.S. Trustee and Wells Fargo argue that there is no "new value" being added consistent with factors articulated in the Ninth Circuit. Under the absolute priority rule shareholder participation may be permitted with the cram-down of a non-consenting impaired class to the extent that shareholders supply new value to the Debtor. The new value corollary allows equity holders to retain their interests if they provide value under a plan that is (1) new, (2) substantial, (3) in money or money's worth, (4) necessary for a successful reorganization, and (5) reasonably equivalent to the value or interest received. *Bonner Mall P'ship v. U.S. Bancorp Mortgage Co. (In re Bonner Mall P'ship)*, 2 F.3d 899, 908 (1993). Proving the new value corollary is a purely factual determination. *Id.* at 911. The objecting parties argue that in this case, the equity holder's proposed "new value" contribution of waiver of his administrative wage claim of \$76,163.08 (DS p. 25 of 78) clearly does not constitute a new value contribution as recognized in this Circuit. By contrast, Debtor asserts that this is a different situation from the cases cited by the objecting parties in that his contribution is the waiver of his administrative claims, rather than any pre-petition claims and so provides "new value" because the contribution is new, substantial (i.e. arguably not de minimis, even though it is less than 1% of the total unsecured claims because unsecured creditors would get nothing in a liquidation), is actual money as the administrative claim is for salary, definitely necessary for the reorganization as it will provide at least something for general unsecured creditors, and is directly equivalent to the value or interest

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, December 2, 2020

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10:00 AM

CONT... **Talk Venture Group, Inc.**

Chapter 11

received. In support of the argument debtor only cites to a single case from the 1930s, *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106 (1939). This is a major sticking point and it is not clear whether the facts of this case support a finding of “new value.” Further, no effort is made to explain how the quantum of new value has been market tested as seems to be required under the Supreme Court’s teaching found in *Bank of America NT&SA v. 203 N. La Salle St. Ptsp.*, 526 U.S. 434, 119 S. Ct. 1411 (1999). As Debtor has acknowledged other shortcomings requiring amendment, the “new value” issue should also be briefed in greater length and detail by the Plan proponent and objecting parties.

Wells Fargo notes that the DS is incomplete because it does not provide adequate information as to why its second secured lien is being treated as wholly unsecured whilst claims of other junior creditors are being treated as partially secure. Debtor asserts that this situation exists because of very limited funds available combined with Wells Fargo’s stubbornness in reaching a compromise on plan treatment, which in turn caused Debtor to seek compromises with the junior creditors in an effort to create a consenting class. Debtor does not cite any authority suggesting that Wells Fargo’s senior lien can be essentially leap frogged in priority, which makes this explanation somewhat dubious.

The other objections common to all of the objecting parties has to do with valuation of assets, including Debtor’s potential claims, possible avoidance actions against Debtor’s principal, and how Debtor can truly fund the Plan. Debtor asserts that valuations of the Debtor’s assets are based on Debtor’s schedules as well as the declaration of Debtor’s principal. As to sources of funds for the plan, as noted above, Debtor has requested leave to amend this section of the DS.

Overall, the DS is not ready to be approved. Beyond its acknowledged shortcomings, it relies on broad readings of caselaw that, based on these facts, might bend the law too far. The recovery for unsecured creditors is also extremely low at less than 1%. Still, even a tiny recovery is likely preferable to a zero recovery, which is what Debtor argues a liquidation in chapter 7 would produce. But, as the plan’s viability depends in large part on being able to generate income not consistently seen to date, and confirmation remains

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

unclear given the absolute priority rule, an amended disclosure statement would need to provide more convincing analysis regarding the "new value" issue.

Continue for those purposes, but with the admonition that the problems presented are so fundamental that yet further extensions should not be expected.

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
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#12.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363 (cont'd from 11-04-20)

Docket 7

Tentative Ruling:

Tentative for 12/2/20:
Continue on same terms to continued disclosure statement hearing.

Tentative for 11/4/20:
Continue on same terms until hearing on disclosure 12/2.

Tentative for 9/2/20:
Grant on same terms and conditions pending further hearing November 4 @ 10:00a.m. The court expects a plan will be on file shortly?

Tentative for 6/30/20:
Status? Continue on same terms another 60 days? When can we see a plan?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Tentative for 5/13/20:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, December 2, 2020

Hearing Room

5B

10:00 AM

CONT... **Talk Venture Group, Inc.**

Chapter 11

This matter is on calendar because permitted use of cash collateral is set to expire as of the hearing per previous order. Nothing further has been filed as of 5/8. Status? The March MOR shows slightly positive cash flow, so, absent objection, the logical order would seem to be continued authority on same terms and conditions for about 60 days.

Tentative for 4/8/20:

Debtor filed an amended motion for use of cash collateral on 4/1/20. Unfortunately, this amended motion is likely untimely because there is nearly no time for any other party to respond before the hearing date on 4/8. In any case, the new amended motion does not appear to address Banc of California's objections to continued use of cash collateral. Therefore, the amended motion should be continued to allow creditors, including Banc of California, adequate time to respond. In the meantime, Debtor should answer Banc of California's allegations of misusing cash collateral.

Continue for about two weeks on same terms. Debtor to address Banc Of California's points. Appearance is optional.

Tentative for 1/22/20:

Continue same terms until April 8, 2020 at 10:00 a.m.

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
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:20-12963 World of Dance Tour Inc.

Chapter 11

#13.00 Motion Of World Of Dance Tour Inc. For Order Authorizing Maintenance Of Existing Bank Accounts And Related Relief

Docket 22

Tentative Ruling:

Tentative for 12/2/20:

Grant provided the reported compromise with the UST is observed.

Party Information

Debtor(s):

World of Dance Tour Inc.

Represented By
Fred Neufeld

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#14.00 Status Conference Re: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 9-23-20 per stip. to cont. hrgs entered 9-09-20)

Docket 1

*** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 11-13-20

Tentative Ruling:

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

**United States Bankruptcy Court
Central District of California
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Wednesday, December 2, 2020

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8:20-10143 Bridgemark Corporation

Chapter 11

#15.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 9-23-20 per order approving stip, to cont, hrgs entered
9-09-20)

PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR

Docket 53

***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 11-13-20**

Tentative Ruling:

Tentative for 2/26/20:

If all that is requested is that both sides be free to complete the state court action, including post trial motions and appeals, to final orders, that is appropriate. Enforcement stes will require further orders of this court.

Grant as clarified.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 2, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#16.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 9-23-20 per order apprvg stip. to cont. hrgs, entered 9-09-20)

Docket 54

***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED ON 11-13-20**

Tentative Ruling:

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

1. Basic Background Facts

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately \$42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than \$25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not appear to be any other debts listed as disputed, contingent, or unliquidated. The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal

**United States Bankruptcy Court
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CONT... **Bridgemark Corporation**

Chapter 11

because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court trial this testimony was elicited:

"We cannot pay the 27 million We have no ability to pay any of this. ... I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done." Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the \$27 million in compensatory damages at \$1 million per year, interest-free, over 27 years. See *Id.* at 3156:20-23 ["We can't pay it. ... If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.... It just goes down and down and down." *Id.* at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

2. Motion to Dismiss & Relief from Stay Standards

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Section 1112(b) of the Bankruptcy Code provides:

"[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id.* § 1112(b)(4)(A), and "gross mismanagement of the estate," *Id.* § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section ... for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.'"]. Thus, the shorthand phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or

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CONT... **Bridgemark Corporation**

Chapter 11

feelings. Instead, the question is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.*

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. *See e.g., In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the litigation"; and
- "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and

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prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes and citations omitted).

"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood)*, 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

3. Was Debtor's Petition Filed for a Proper Purpose?

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917–18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013) where the court found:

Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the

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judgment or cover the cost of a supersedeas bond. The bankruptcy court found that the Fraud Judgment amounted to over \$12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id.* It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation.'" *Marshall*, 721 F.3d at 1048 (quoting 298 B.R. at 681)). PDC persuasively argues that it would be inappropriate to infer a broader rule from *Marshall*. PDC argues with some

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persuasion that the other cases cited by Debtor were ones in which the courts based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id.* at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id.*

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately \$3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id.* at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id.* The debtor later amended his plan to provide that if the judgment were upheld on appeal, he would liquidate his assets and give the proceeds to the judgment creditor. *Id.* The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of the circumstances" warranted dismissal of the case for cause. *Id.* at *4.

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PDC argues that Debtor has admitted in the authorizing resolution attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11" Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. After all, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to make a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), *aff'd*, 565 B.R. 527 (S.D.N.Y. 2017), *aff'd*, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets" As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26, 2011).

PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with competing demands to Debtor's assets. All other claims against Debtor are

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CONT... **Bridgemark Corporation**

Chapter 11

de minimis relative to the Judgment, and also appear to be undisputed. Cf. *In re Mense*, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately \$4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than \$700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a reorganization is likely not feasible due to the enormous judgment debt and

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Debtor's ever diminishing product source. The court is also not impressed with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable extension to answer these questions about just how probable a

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CONT... Bridgemark Corporation

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reorganization is or can be despite these obstacles. In this the court is uninterested in platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#17.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 9-23-20 per order apprvng stip. to cont. hrgs entered 9-09-20)

Docket 93

***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 11-13-20**

Tentative Ruling:

Tentative for 3/25/20:

Stipulation to continue to 4/29/20 expected per phone message. Status?

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

**United States Bankruptcy Court
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8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#18.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 9-23-2020 per order on stip to further cont s/c entered 9-9-2020)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M.
PER ORDER ON STIPULATION TO FURTHER CONTINUE HEARING
ON INITIAL STATUS CONFERENCE ENTERED 11-13-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Defendant(s):

Placentia Development Company

Pro Se

Plaintiff(s):

Bridgemark Corporation

Represented By
Erin E Gray
James KT Hunter
William N Lobel

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 3, 2020

Hearing Room

5B

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Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1610243936>

ZoomGov meeting number: 161 024 3936

Password: 901382

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Thursday, December 3, 2020

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 9-03-20 per order approving stip. to cont. s/c entered 8-28-20)

Docket 83

Tentative Ruling:

Tentative for 12/3/20:
Continue to February 25, 2021 @10:00 a.m.

Appearance: optional

Tentative for 2/27/20:
Status conference continued to May 28, 2020 at 10:00AM. Looks like this case is drifting. Continue one last time.

Tentative for 11/7/19:
See #15 at 11:00AM. Are parties prepared to set deadlines on complaint issues?

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

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CONT... **Point Center Financial, Inc.**
examined.

Chapter 7

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
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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

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

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room

5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

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 -
Monica Rieder

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

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, December 3, 2020

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
(con't from 9-03-20 per order approving stip. to cont. s/c entered 8-28-20)

Docket 1

Tentative Ruling:

Tentative for 12/3/20:
Continue to February 25, 2021 @10:00 a.m.

Appearance: optional.

Tentative for 2/27/20:
Status conference continued to May 28, 2020 at 10:00AM. Some of these cases appear to be drifting. Continue one last time.

Tentative for 12/5/19:
Why no status report?

See #16.

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, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

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
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 3, 2020

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

Adv#: 8:16-01071 Plaza Healthcare Center, LLC et al. v. Country Villa Service Corporation

#3.00 CONT STATUS CONFERENCE RE: Complaint for: (1) Avoidance and recovery of preferential transfers [11 U.S.C. Sections 547(b), 550(a), and 552]; and (2) Disallowance of any claims held by Defendant [11 U.S.C. Section 502(d)]; and (3) Turnover of any and all amounts paid on any and all disallowed claims [11 U.S.C. Section 542]

[fr: 5/25/16, 6/22/16, 9/28/16, 11/22/16, 1/24/17, 3/29/17, 6/21/17, 6/28/17, 8/30/17, 9/7/17, 11/1/17, 1/31/18, 3/28/18, 8/1/18, 8/15/18, 11/7/18, 3/13/19, 9/11/19, 12/11/19, 6/3/20]

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF AN ADVERSARY PROCEEDING FILED
11-30-20**

Tentative Ruling:

No appearances necessary. The hearing will be continued to December 2, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Plaza Healthcare Center LLC

Represented By

Ron Bender
Lindsey L Smith
Krikor J Meshefejian
Monica Y Kim
Kurt Ramlo
Michelle S Grimberg
Philip A Gasteier

Defendant(s):

Country Villa Service Corporation

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... Plaza Healthcare Center LLC

Chapter 11

Plaintiff(s):

Plaza Healthcare Center, LLC et al.

Represented By
Ron Bender
Lindsey L Smith
Jacqueline L James

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 3, 2020

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

**#4.00 STATUS CONFERENCE RE: Complaint to Determine Debt to be
Nondischargeable Pursuant to 11 U.S.C. Section 523(a)(6)
(set from p/c hrg held on 2-06-20)**

Docket 1

Tentative Ruling:

Tentative for 12/3/20:

Continue as requested to projected completion of state court trial. November 11, 2021 @ 10:00 a.m.?

Appearance: optional.

Tentative for 2/6/20:

Discuss appropriate approach to this action in view of appellate court's reversal of default. Moratorium order? Continuance?

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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room

5B

10:00 AM

CONT... Maria T. Misa

Chapter 7

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:

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?

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... Maria T. Misa

Chapter 7

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, December 3, 2020

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)
(cond't from 7-23-20)

Docket 1

Tentative Ruling:

Tentative for 12/3/20:
Continue to January 28, 2021 @ 10:00 a.m. to allow prove up and entry of judgment.

Tentative for 7/23/20:
Continue to December 3, 2020 at 10:00am per request.

Tentative for 3/12/20:
Status conference continued to June 25, 2020 at 10:00AM.

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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... Stephen Nguyen

Chapter 7

Tentative for 5/30/19:
Why no status report?

Party Information

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, December 3, 2020

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.

**#6.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 9-24-20 per order appr. stip to cont. s/c entered 9-16-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-11-2021 AT 10:00 .M.
PER ORDER APPROVING STIPULATION TO EXTEND DEADLINE TO
RESPOND TO COMPLAINT ENTERED 11-19-20**

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

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.

**#7.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 9-24-20 per order approving stip to cont. s/c entered 9-17-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-04-2021 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
ENTERED 11-23-20**

Tentative Ruling:

Tentative for 6/27/19:
Why no status report?

Party Information

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, December 3, 2020

Hearing Room 5B

10:00 AM

8:19-12162 John Louis Katangian

Chapter 11

Adv#: 8:19-01181 City of Los Angeles v. Katangian

**#8.00 STATUS CONFERENCE RE: Complaint to Determine Non-dischargeability of Debt
(cont'd from 3-5-20)**

Docket 1

Tentative Ruling:

Tentative for 12/3/20:

The court is not inclined to merely wait while an appeal of the state court judgment proceeds, which could take years, but since there seems to be some recognition of a possible settlement, the status conference may be continued to February 11 @ 10:00 a.m. at which time the parties can expect that deadlines will be imposed at that time. Of course, a Rule 56 motion can also be filed as appropriate in meantime.

Appearance: required

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... John Louis Katangian

Chapter 11

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 3, 2020

Hearing Room 5B

10:00 AM

8:19-12795 Lorraina C. Navarette

Chapter 7

Adv#: 8:19-01209 Lindbergh v. Navarette

#9.00 CONT STATUS CONFERENCE RE: Complaint re: Objection/recovation of discharge under section 727(c)(d)(e) and Dischargeability under section 523(a) (6), willful and malicious injury
**[Another summons issued on 1/21/2020]
(case reassigned per administrative order 20-07 dated 7-15-2020)
(cont'd from 9-24-20)**

[fr: 1/21/20, 4/7/20, 6/23/20]

Docket 3

Tentative Ruling:

Tentative for 12/3/20:

Why did Plaintiff not join in the status report? The unilateral report filed by defendant is not illuminating. A continuance is probably indicated but the parties need to appear with an explanation as to where this case is going and how much time is needed.

Tentative for 9/24/20:

why no status report?

Prior Tentative:

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Lorraina C. Navarette

Represented By

Patricia M Ashcraft - SUSPENDED BK -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

8:18-11155 Kenneth David Bishop

Chapter 7

Adv#: 8:20-01032 Marshack v. Foster

#10.00 STATUS CONFERENCE RE: Complaint for: 1. Avoidance and Recovery of Preferential Transfer; 2. Avoidance and Recovery of Intentional Fraudulent Transfer and; 3. Avoidance and Recovery of Constructively Fraudulent Transfer (con't from 9-03-20 per order granting application to cont. s/c entered 8-31-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF VOLUNTARY DISMISSAL OF AN ADVERSARY PROCEEDING FILED 9-16-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth David Bishop

Represented By
Leonard M Shulman

Defendant(s):

Hal Foster

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, December 3, 2020

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01088 Marshack v. Interstate Oil Company

**#11.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims
(cont'd from 10-29-20 per order granting stip. to cont. s/c entered 9-02-20**

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-07-21 AT 10:00 A.M.
PER ORDER GRANTING SECOND STIPULATION TO CONTINUE
STATUS HEARING ENTERED 11-03-20**

Tentative Ruling:

Tentative for 8/6/20:
What is status of answer? Continue?

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Interstate Oil Company

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, December 3, 2020

Hearing Room 5B

10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01093 Romex Textiles, Inc. v. Kim

**#12.00 STATUS CONFERENCE RE: Complaint to determine dischargeability of a debt and objection to discharge
(case reassigned from Judge Catherine E. Bauer per admin order 20-07 dated 7-15-20)
(cont'd from 9-03-20)**

Docket 1

Tentative Ruling:

Tentative for 12/3/20:

Continue to January 28, 2021 @ 10:00 a.m. to permit appearance by defendant and a meaningful joint status report, or entry of default as appropriate

Appearance: optional

Tentative for 9/3/20:

Per request, continued to December 3 @ 10:00 a.m. Plaintiff to give notice.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Defendant(s):

Katie Ki Sook Kim

Pro Se

Plaintiff(s):

Romex Textiles, Inc.

Represented By
Nico N Tabibi

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT... Katie Ki Sook Kim

Chapter 7

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 3, 2020

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01125 OOO KARENTA v. Shabanets

#13.00 STATUS CONFERENCE RE: Complaint For Nondischargeability of Debt Pursuant to 11 USC Sections 523(a)(2)(A); 523(a)(3)(B); 523(a)(4), 523(a)(6)

Docket 1

Tentative Ruling:

Tentative for 12/3/20:

Deadline for completing discovery: November 1, 2021

Last date for filing pre-trial motions: November 19, 2021

Pre-trial conference on: December 9, 2021 @ 10:00 a.m.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Pro Se

Plaintiff(s):

OOO KARENTA

Represented By
Elena Steers

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**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

8:13-16402 Gentile Family Industries

Chapter 11

Adv#: 8:20-01126 GENTILE FAMILY INDUSTRIES v. Gentile, Sr. et al

#14.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief; 2. Interference With Contractual Relations; 3. Tortious Interference With Contract; 4. Temporary Restraining Order, Preliminary Injunction And Permanent Injunction Pursuant to 11 USC Section 105

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-28-2021 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION RE: REFERRAL OF
MATTER TO MEDIATION & RESCHEDULING DEFENDANTS'
MOTION TO DISMISS & (2) STATUS CONFERENCE ENTERED 10-22-
10**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gentile Family Industries

Represented By
Jeffrey W Broker

Defendant(s):

Philip J Gentile Sr.

Pro Se

Phillip J Gentile Jr.

Pro Se

Plaintiff(s):

GENTILE FAMILY INDUSTRIES

Represented By
Jeffrey W Broker

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

8:20-11517 Boyu Liu

Chapter 7

Adv#: 8:20-01129 FS Hawaii Inc v. Liu

#15.00 STATUS CONFERENCE RE Complaint of Creditor FS Hawaii, Inc: 1) Objecting to the Discharge of Debtor Under 11 U.S.C. Section 727 (a)(2)(3), (4) and (5); 2) For Avoidance of Fraudulent Transfers Under 11 U.S.C. Section 548

Docket 1

Tentative Ruling:

Tentative for 12/3/20:

Deadline for completing discovery: July 30, 2021

Last date for filing pre-trial motions: August 13, 2021

Pre-trial conference on: August 26, 2021 @ 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 June 1, 2021.

Appearance: optional

Party Information

Debtor(s):

Boyu Liu

Represented By
Richard G Heston

Defendant(s):

Boyu Liu

Pro Se

Plaintiff(s):

FS Hawaii Inc

Represented By
Carlos A De La Paz

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, December 3, 2020

Hearing Room 5B

10:00 AM

8:19-11975 Farhad Mohebbi

Chapter 7

Adv#: 8:20-01130 Kosmala v. Mohebbi et al

#16.00 STATUS CONFERENCE RE:Complaint: (1) For Imposition of Resulting Trusts ; (2) Declaratory Relief; (3) Turnover of Property of The Estate Pursuant to 11 U.S.C. § 542(a); and (4) For Authorization to Sell Real Property in Which Co-Owner Holds Interest Pursuant to 11 U.S.C. § 363(h)

Docket 1

Tentative Ruling:

Tentative for 12/3/20:
See #29

Deadline for completing discovery: May 31, 2021
Last date for filing pre-trial motions: June 18, 2021
Pre-trial conference on: July 1, 2021 @ 10:00 a.m.

Party Information

Debtor(s):

Farhad Mohebbi

Represented By
Halli B Heston

Defendant(s):

Farhad Mohebbi

Pro Se

Nasim A Mohebbi

Pro Se

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Reem J Bello

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01131 OneSource Distributors, LLC v. Dang et al

#17.00 STATUS CONFERENCE RE: Complaint For: Determination Of
Nondischargeability Of Debt Pursuant To 11 USC Section 523(a)(2), Section
523(a)(4), And 11 USC Section 523(a)(6)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
FILE ANSWER TO THE COMPLAINT ENTERED 11-16-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Defendant(s):

Hoan Dang

Pro Se

Diana Hongkham Dang

Pro Se

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Plaintiff(s):

OneSource Distributors, LLC

Represented By
Pamela J Scholefield

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

CONT...

Hoan Dang

James C Bastian Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01133 Toll Bros, Inc. v. Dang et al

#18.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
FILE ANSWER TO THE COMPLAINT ENTERED 11-16-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Defendant(s):

Hoan Dang

Pro Se

Diana Hongkham Dang

Pro Se

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Plaintiff(s):

Toll Bros, Inc.

Represented By
Nichole M Wong

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

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.

- #19.00** 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 9-24-20 per order approving stipulation entered 9-10-2020)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-04-21 PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 11-16-20**

Tentative Ruling:

Tentative for 10/8/15:
Deadline for completing discovery: June 1, 2016
Last date for filing pre-trial motions: June 20, 2016
Pre-trial conference on: July 7, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh

Defendant(s):

Anna's Linens, Inc.

Pro Se

Plaintiff(s):

Linda Martz-Gomez

Represented By

**United States Bankruptcy Court
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CONT... Anna's Linens, Inc.

Chapter 11

Gail L Chung
Jack A Raisner
Rene S Roupinian

U.S. Trustee(s):

United States Trustee (SA)

Represented By
Michael J Hauser

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:15-01426 Marshack v. Jakubaitis et al

#20.00 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 at s/c held 8-15-19)
(cont'd from 9-24-20)

Docket 1

Tentative Ruling:

Tentative for 12/3/20:

It is more than disappointing that we still cannot accomplish even the simplest of tasks in this case, i.e. a joint pretrial stipulation. The court will order the two counsel to meet at a time and place to be set upon the record for purposes of combining the two unilateral stipulations into a useable joint pretrial stipulation. If the parties cannot agree then, as the LBRs contemplate, there shall be set forth a list of the areas of disagreement in the single document. The court expects that everything that can be agreed upon will be and that each side will extend its utmost cooperation. This is the last chance to do this right before sanctions are imposed which can include either /or striking of pleadings or monetary sanctions. Continue to January 28, 2021 @ 10:00 a.m. for further pretrial conference and evaluation of the effort. Appearance required.

Tentative for 9/24/20:

The court will spare all a long recital of the frustrations occasioned by the continued and dismal lack of cooperation in these related cases, or the parties' seeming indifference to either the court's orders or to the LBRs. The court will only state this is not the first time. Here we are, at the date of pretrial conference and we have nothing at all from the defendant, and what might be worse, no explanation either. So be it. Plaintiff's unilateral pretrial order is adopted. How the defendant can still make a case around those provisions is

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CONT... Tara Jakubaitis

Chapter 7

unclear. A trial date will be scheduled approximately three months hence. The court will hear argument whether this should be in person or via Zoom.

Tentative for 2/27/20:

This is supposed to be a pre-trial conference. Sadly, it is not that and this is hardly the first time in this series of cases where the court has been sorely frustrated.

As required by the LBRs, the parties were to have met and conferred in good faith to narrow the issues so that trial time could be focused on those items truly in dispute. Local Rule 7016-1 sets forth a very specific timeline and list of duties incumbent on each side. At LBR 7016-1(b)(1)(C) Plaintiff was to have initiated a meet and confer *at least 28 days* before the date set for the pre-trial conference. According to Defendant's papers, this did not occur 28 days before the originally scheduled pretrial conference of Feb. 6, *or indeed at all* until February 13 when Plaintiff reportedly filed his "Pretrial Stipulation" in which he claims it was Defendants who "refused to participate in the pretrial stipulation process" necessitating what is actually a unilateral stipulation. Defendant on the next day, February 14, filed his Unilateral Pretrial Stipulation. Defendant does acknowledge at his page 2, line1-2 that Plaintiff sent something over to Defendant on January 28, but it was reportedly "not complete in any respect." As to the original date of the Pretrial Conference of February 6, that was *very late*. Whether that document was anything close to what was later filed unilaterally on Feb. 13 is not clarified. But what is very clear is that these two unilateral "stipulations" are largely worthless in the main goal of narrowing issues inasmuch as the parties seem to be discussing two entirely different complaints. Defendant focuses on what the former trustee (now deceased) may have known about the existence of a loan undisclosed on the schedules made by Frank to WeCosign, Inc., which loan was reportedly worthless in any case, and about how that knowledge should be imputed to Plaintiff Marshack. But why the trustee's knowledge,

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CONT... Tara Jakubaitis

Chapter 7

imputed or otherwise, should justify an alleged misstatement or omission to list assets under oath, is never quite explained. One presumes Defendant will argue materiality. Plaintiff focuses on the alleged use of another corporation, Tara Pacific, as the repository of funds taken from WeCosign as an alleged fraudulent conveyance and then used by Frank and Tara as a piggy bank between 2010 and 2012 and upon alleged misstatements in the schedules about Tara's and Frank's actual average income. While this sounds like a fraudulent conveyance theory the gist seems to be that Tara and Frank were using ill-gotten gains to live on while denying in respective schedules that they had any income (or assets) thus comprising a false oath. There probably are connections between these different stories, but that is not made at all clear (and it must be made clear). Plaintiff's overlong "stipulation" is written more like a 'cut and paste' brief containing long tables with over 59 footnotes inserted. One presumes this represents a good faith compilation of bank records, but even that is left unclear. But the language used reads purely as advocacy, not an attempt to narrow the disputed facts in a way the other side can sign.

Buried in the Defendant's recitations (at page 4, ¶ 13) is the argument that the case should be dismissed as outside the statute of limitation (or statute of repose in Defendant's terms) described at §727(e)(1). Why this was not raised 50+ months ago when the action was filed by Rule 12(b) motion or otherwise is not explained. What the Defendant expects the court to do with this point now is also not explained.

In sum, this case is still a disorganized mess. This is not the first time the court has voiced its utter frustration with this series of cases. Rather than being ready for trial, we are very much still at the drawing board. The court is not happy about it as this is hardly a young case.

What is the remedy? The court could order sanctions against either side, or maybe both sides, and that would be richly deserved. The court could decide that Plaintiff as the party with the initial duty under the LBRs should

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10:00 AM

CONT...

Tara Jakubaitis

Chapter 7

suffer the brunt of just consequences by a dismissal, as the ultimate sanction. But however tedious and frustrating this has become the court would rather see these cases decided on their merits (if any) *if that is possible*. But what the court will not do is to further indulge these parties in disobeying the LBRs and generally continuing to shamle along, never getting anywhere. Therefore, **it is ordered**:

1. The parties will immediately meet and confer about reducing the two unilateral 'stipulations' into an intelligible, single, useful list of items not in dispute and therefore requiring no further litigation;
2. The resulting stipulation will be concise, user-friendly and focused on the actual legal issues to be tried;
3. The stipulation will contain a concise list of exhibits to be offered at trial identified by number for Plaintiff and letter for Defendant;
4. The parties will attempt in good faith to resolve any evidentiary objections to admission of the exhibits, and if agreement cannot be reached, state concisely the reasons for or against admissibility;
5. The stipulation will contain a list of witnesses to be called by each side, with a very brief synopsis of the expected testimony;
6. All factual matters relevant and truly in dispute will be listed, by short paragraph;
7. All legal issues to be decided will be separately listed, by paragraph;
8. Any threshold issues such as Defendants argument about statute of repose will be separately listed along with a suggested

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CONT...

Tara Jakubaitis

Chapter 7

means of resolving the issue; and

9. Both sides will estimate expected length of trial, mindful that the court requires all direct testimony by declaration with the witnesses available at trial for live cross and re-direct.

In sum the parties are to do their jobs. If the court's order is not followed *in enthusiastic good faith, and completely* with the goal of narrowing the issues, and if the resulting product is not a concise, user-friendly joint pretrial stipulation, the offending party or parties will be subject to severe sanctions which may include monetary awards and/or the striking or either the complaint or answer.

Continue about 60 days to accomplish the above.

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?

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CONT... Tara Jakubaitis

Chapter 7

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
discovery is complete?

Tentative for 7/13/17:
It looks like discovery disputes must be resolved before any hard dates can
be set.

Tentative for 5/4/17:
Status conference continued to June 29, 2017 at 10:00 a.m. Do deadlines
make sense at this juncture given the ongoing disputes over even
commencing discovery?

Tentative for 3/23/17:
See #13.1

Tentative for 12/8/16:
No status report?

Tentative for 3/10/16:
See #6 and 7.

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CONT... Tara Jakubaitis

Chapter 7

Tentative for 1/14/16:
Status conference continued to March 10, 2016 at 11:00 a.m. to coincide with
motion to dismiss.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

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, December 3, 2020

Hearing Room 5B

10:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:18-01064 Marshack v. Castanon et al

#21.00 PRE-TRIAL CONFERENCE RE: Complaint For Declaratory Relief Regarding Property Of The Estate Pursuant To 11 USC § 541 (set from s/c hrg held on 12-5-19) (rescheduled from 5-7-2020 at 10:00 a.m.) (cont'd from 10-01-20 per order approving stip. to extend dates in modified scheduling order entered 9-04-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-28-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO FURTHER EXTEND DATES IN MODIFIED SCHEDULING ORDER ENTERED 11-20-20**

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

**United States Bankruptcy Court
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10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

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

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
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10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw

**United States Bankruptcy Court
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Santa Ana
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Thursday, December 3, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#22.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Based On Fraud And Objecting To Discharge Of Debtors (cont'd from 10-01-20 per order re: stip. to cont. pre-trial conf. entered 9-04-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-28-21 AT 10:00 A.M.
ORDER RE: STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE
HEARING ENTERED 12-01-20**

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.

Tentative for 6/6/19:

See # 23 & 24 - Motions to Dismiss

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

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CONT... Fariborz Wosoughkia

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

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, December 3, 2020

Hearing Room

5B

10:00 AM

8:19-11359 Ronald E. Ready

Chapter 7

Adv#: 8:19-01154 Paramount Residential Mortgage Group Inc v. Ready

#23.00 PRE-TRIAL 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) (con't from 10-8-2020 per order appr. stip. to con't ent.10-07-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-28-21 AT 10:00 A.M.
PER ORDER APPROVING THE STIPULATION TO CONTINUE
PRETRIAL CONFERENCE AND MOTION CUTOFF DATE ENTERED 11
-25-26**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald E. Ready

Represented By
Joseph A Weber
Fritz J Firman

Defendant(s):

Ronald E Ready

Represented By
Fritz J Firman

Plaintiff(s):

Paramount Residential Mortgage

Represented By
Shawn N Guy

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, December 3, 2020

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01079 Remares Global, LLC, a Florida limited liability c v. Shabanets et al

#24.00 Motion To Set Aside Entry Of Default Of Olga Shabanets, As Trustee Of The 2012 Irrevocable Trust Agreement Of Igor Shabanets Dated November 12, 2012; Oldga Shabnets, An Individual, To Complaint

Docket 57

Tentative Ruling:

Tentative for 12/3/20:

Defendant, Olga Shabanets and her 2012 Trust have filed this second motion to set aside the default judgment. Her motion is substantially similar to the one she filed a few months ago, which was denied. The differences between the old motion and the new one are the declarations attached. Otherwise, they appear to be almost identical. But, as discussed below, the new declarations add little clarity as to why Olga failed to file an answer to the summons and complaint. For clarity, the prior tentative from October 1, 2020 is incorporated herein by reference.

As the opposition to the current motion points out, there are several inconsistencies in Olga's latest version of events, as follows:

The dates at which Olga resided at 2 Monarch Cove seem to vary from the last declaration in which Olga stated that she was forced to leave 2 Monarch in August of 2019, but now she states that she moved back into or visited 2 Monarch in September of 2019 and vacated once again in October of 2019 (allegedly permanently).

The opposition also notes that the signatures on Olga's old declaration and new declaration are completely different, which may be an indicator that one or both of the declarations are not truly hers. In fact, a look at the signature on the latest declaration purporting to be Olga's looks very similar to Zinaida Lysenko's (Olga's mother) signature found on her declaration. Allegedly, Olga does not speak or write in English which adds a dimension of uncertainty since no translation of her purported declaration is offered. In any case, it is at least suspicious and, therefore, unreliable.

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11:00 AM

CONT... Igor Shabanets

Chapter 7

The new motion also does not explain whether Olga set-up mail forwarding when she left 2 Monarch in August of 2019, whether she collected old mail when she returned to 2 Monarch in September of 2019, whether her mother delivered any mail to her, and why she did not learn of the lawsuit against her and the Trust through her attorney, Boice, who was also timely served with a copy of the summons and complaint.

As in the previous motion, Olga has again not demonstrated that the failure to answer the complaint was excusable and not the result of her own culpable actions or inaction. Similarly, as in the previous motion, the latest motion does not demonstrate that Olga has a meritorious defense, but reads like threadbare recitals of causes of action without sufficient supporting facts alleged or analysis to determine whether such a defense would be viable.

In sum, this latest motion, like the previous motion, leaves the court with several unanswered questions, of which it is Olga's burden to clarify in order to succeed on this motion. Thus, Olga has again not carried her burden and the motion will be denied.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Pro Se

Olga Shabanets

Represented By
Bruce A Boice

Olga Shabanets, as trustee of the

Represented By
Bruce A Boice

Richard A Marshack

Represented By
D Edward Hays

**United States Bankruptcy Court
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11:00 AM

CONT... Igor Shabanets

Chapter 7

Plaintiff(s):

Remares Global, LLC, a Florida

Represented By
Alan W Forsley

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

**United States Bankruptcy Court
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Santa Ana
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Thursday, December 3, 2020

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:18-01107 Naylor v. Watanabe

#25.00 Motion to Continue Pre-Trial Conference, Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses

Docket 60

Tentative Ruling:

Tentative for 12/3/20:

Grant requested continuance of deadlines, Further extensions should not be expected. Pre Trial conference continued to April 29, 2021 @ 10:00 a.m.

Movant to submit order. 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

Defendant(s):

Neil Watanabe

Represented By
Jonathan Seligmann Shenson
Lauren N Gans

Plaintiff(s):

Karen Sue Naylor

Represented By
Todd C. Ringstad
Brian R Nelson
Christopher Minier

**United States Bankruptcy Court
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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

Richard C Donahoo

Andrew Still

**United States Bankruptcy Court
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Santa Ana
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Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:18-01108 Naylor v. Miller

#26.00 Motion to Continue Pre-Trial Conference, Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses

Docket 70

Tentative Ruling:

Tentative for 12/3/20:

Same as #25; grant requested continuance of deadlines, Further extensions should not be expected. Pre Trial conference continued to April 29, 2021 @ 10:00 a.m. Movant to submit order. 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

Defendant(s):

Dale Miller

Represented By
Jonathan Seligmann Shenson
Lauren N Gans

Plaintiff(s):

Karen Sue Naylor

Represented By
Todd C. Ringstad
Brian R Nelson
Christopher Minier

**United States Bankruptcy Court
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Thursday, December 3, 2020

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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

Richard C Donahoo

Andrew Still

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Thursday, December 3, 2020

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11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:18-01109 Naylor v. Gladstone

#27.00 Motion to Continue Pre-Trial Conference, Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses

Docket 54

Tentative Ruling:

Tentative for 12/3/20:

Same as #25; grant requested continuance of deadlines, Further extensions should not be expected. Pre Trial conference continued to April 29, 2021 @ 10:00 a.m. Movant to submit order. 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

Defendant(s):

Alan Gladstone

Represented By
Jonathan Seligmann Shenson
Lauren N Gans

Plaintiff(s):

Karen Sue Naylor

Represented By
Todd C. Ringstad
Brian R Nelson
Christopher Minier

**United States Bankruptcy Court
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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

Richard C Donahoo

Andrew Still

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:18-01110 Naylor v. Doll

#28.00 Motion to Continue Pre-Trial Conference, Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses

Docket 42

Tentative Ruling:

Tentative for 12/3/20:

Same as #25; grant requested continuance of deadlines, Further extensions should not be expected. Pre Trial conference continued to April 29, 2021 @ 10:00 a.m. Movant to submit order. 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

Defendant(s):

Carie Doll

Represented By
Jonathan Seligmann Shenson
Lauren N Gans

Plaintiff(s):

Karen Sue Naylor

Represented By
Todd C. Ringstad
Brian R Nelson
Christopher Minier

**United States Bankruptcy Court
Central District of California
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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

Richard C Donahoo

Andrew Still

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 3, 2020

Hearing Room 5B

11:00 AM

8:19-11975 Farhad Mohebbi

Chapter 7

Adv#: 8:20-01130 Kosmala v. Mohebbi et al

#29.00 Motion to Dismiss Adversary Complaint Pursuant to FRCP 12(b)(6)

Docket 5

Tentative Ruling:

Tentative for 12/3/20:

This is the Defendants' Motion to Dismiss under Rule 12(b).

The Defendants, Farhad and Nasim Mohebbi, were married in 1991. They purchased two properties during their marriage, known as the Sonrisa and Weyburn properties (the "Properties"). The Sonrisa Property is located 30282 Sonrisa Lane, Laguna Niguel, California 90201. The Weyburn Property is located 24812 Weyburn Drive, Laguna Hills, California 92653. During their marriage, Nasim's earnings were the primary source of income for the marital community. The Debtors filed a petition for dissolution of their marriage on April 14, 2006 and lived apart for about a year and a half.

Allegedly as a result of their separation, they executed a Marriage Settlement Agreement that detailed how they would deal with their Properties and other assets. It divided the Debtors' community property and gave Nasim, the wife, the Properties as her separate property. Farhad, the husband, obtained his chiropractic practice as his separate property. The Debtors were separated and apart for more than a year. They reconciled and remarried about 11 months after the Marriage Settlement Agreement and, prior to remarrying, they executed a Premarital Agreement. The essence of the Premarital Agreement provided that whatever property that was held by either party prior to marriage, including Nasim's ownership of the Properties, would continue to be separate property. Furthermore, it included that any other property purchased during marriage would be the separate property of whoever acquired the property. In March 2010, the Debtors executed a Property Agreement, which was created allegedly for estate planning purposes. The effect of it was that it only confirmed that the Properties were Nasim's separate property. It did not purport to transfer any interest in the Properties.

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CONT... Farhad Mohebbi

Chapter 7

The Chapter 7 Trustee, the Plaintiff, for the bankruptcy estate of the Debtor, Farhad Mohebbi, has filed a complaint for Judgment: (1) imposing a resulting trust on the Properties and an order declaring title in the Properties to be in the name of the Trustee for the benefit of the estate and Nasim; (2) declaring the Properties to be property of the Estate; (3) requiring that the Properties be turned over to the Trustee for the benefit of the estate; (4) that the Trustee may sell both the Estate's interest and interest of Nasim; (5) awarding Trustee's attorney's fees and costs and (g) For other relief just and proper.

In their Rule 12(b) motion Defendants urge the following points:

1. Argument #1: There were no Transfers of Property that would Create a Resulting Trust

Trustee argues that Farhad transferred title to the Properties to Nasim but intended to retain the benefit or occupancy of the Properties. In the complaint, the Trustee argues that Farhad transferred only bare legal title to the Properties, as an intra-family transfer for no consideration. The Trustee argues that Nasim took bare legal title to both the Properties as joint tenants and that the Debtor, Farhad, did not intend Nasim to receive his beneficial share of the interest in Properties. More so, the Trustee alleges that the Debtor continued to live in, receive benefits and enjoy the Properties and even made payments relating to it. Based on that the Trustee believes that she is entitled to the imposition of a trust on the Properties and an order declaring title to the Properties to be in the name of both Debtors as joint tenants and thus part of the bankruptcy estate.

Defendants argue that there were no transfers of property that would create a resulting trust. Defendants argue that Farhad had no intention to retain any of his interest in the Properties. Evidence of this was that there was fair consideration given which was that Farhad received his practice in exchange of Nasim getting title to the Properties. Under this theory Farhad received no benefits from the Properties. Furthermore, after reconciling, the Debtors formed a Trust and executed a Property Agreement. This, according to the Defendants, only confirmed that the Properties were still Nasim's

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CONT...

Farhad Mohebbi

Chapter 7

separate properties. Furthermore, Farhad lived with his friend and then mother when they were separated which allegedly shows that he did not benefit from the Properties nor did he intend to receive a benefit in the future.

Thus, as the argument goes, there was no actual transfer of interest that would create a trust. Rather the only transfer of the Properties that occurred was done pursuant to a 2007 Divorce Judgment with the intention to distribute the community property of the Debtors from their first marriage. The goal of this Agreement was allegedly to give Nasim the benefit of the Properties as an unmarried person and to exclusion of Farhad and that Farhad would enjoy the benefits of his chiropractic practice. Any agreements that were signed by the Debtors allegedly just made sure that Nasim would keep her separate property as separate and that even after their remarriage, the property they obtained would be separate.

2. Argument #2: The Only Transfer of Property Occurred in June 2007 and is Beyond Any Applicable Statutes of Limitation.

The Trustee's argument is that a resulting trust was created because the Properties were in the name of both Defendants, both parties continued to enjoy the Properties and thus, in equity, the estate should be entitled to those Properties in the bankruptcy estate

The Defendants argue that the only transfer of property was from the 2007 Divorce Judgment and was done for the purpose of equally distributing the community property from their first marriage. Furthermore, the Defendants argue that even if the Trustee's claim that the transfer was wrong or improper, six years have passed since that transfer and it exceeds the statute of limitations. Defendants argue that the Trustee could bring an action no more than one year after the transfer was made.

3. Argument #3: Since the Trustee's Argument for a Resulting Trust must fail, the Additional Relief requested in conjunction with the Claim for Declaratory Relief, Turnover and Authorization to Sell Must Also Fail.

In the Complaint Trustee is requesting declaratory relief in the form of a judicial declaration that that Farhad is a joint owner of the Properties and

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CONT... Farhad Mohebbi

Chapter 7

not just Nasim. The Trustee further requests that such interests be declared property of the bankruptcy estate. The Trustee also asks for an order that would compel the turnover of the Properties again for the benefit of the estate so it could be used for the Debtor's creditors. Lastly, the Trustee asks for an order that the Trustee can sell both the Estate's interest and Nasim's interest.

Defendants respond that because the Trustee's cause of action failed to state a cause of action upon which relief can be granted pursuant to FRCP 12 (b)(6) then any additional relief that the Trustee requested in conjunction with the claim as a corollary should also be denied and/or the remedies associated with the claim such as turnover or sale of joint interest should also be dismissed.

4. Rule 12(b) Standards

A motion to dismiss for a failure to state a claim is governed by FRCP Rule 12 (b)(6) and applies to adversary proceedings in bankruptcy cases. FRBP 7012 (b). 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."

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Santa Ana
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CONT... Farhad Mohebbi

Chapter 7

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 554-556, 127 S. Ct. 1955, 1964-65 (2007) A complaint must contain enough 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. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.* Threadbare recitals of elements supported by conclusory statements are not sufficient. *Id.* The facts stated by the nonmoving party from the record are accepted as true and any inferences that are drawn by the court are in the favor of the nonmoving party. *Everest & Jennings, Inc. v. Am Motorists Ins. Co.* 23 F. 3d 226 (1994). Furthermore, the court has to find whether it is beyond doubt that the plaintiff can prove no set of facts support their claim. *Id.* This standard has been tempered in the *Iqbal* and *Twombly* cases to require that the plaintiff must state enough facts that create a plausible claim for relief. But it has not changed that Rule 12(b) motions are not the place to sort out disputed questions of fact. Instead, the court must indulge all disputes of fact in favor of the nonmoving party. As discussed below, this precept alone is enough to defeat this motion.

5.. A Resulting Trust is a Remedy Derived from Circumstances and Limitations Runs from a Date Uncertain

A resulting trust is remedial and is created when a transferor makes or causes to be made a disposition of property in circumstances where equity seeks to prevent an inequitable result. Under Defendants' cited case *Tawansy v. Leslie (In re Raymond Renaissance Theatre)*, 583 B.R. 735, 746 (Bankr. C.D. Cal. 2018) such an implied trust does not need a writing or express declaration of trust; it is dependent on the circumstances. *Id.* citing *Honkanen v. Hopper (In re Honkanen)* 446 B.R. 373, 379 (9th Cir BAP 2011) and *Swimmer v. Moeller (In re Moeller)*, 466 B.R. 525 (Bankr. S.D. Cal. 2012). The statute of limitation on a resulting trust does not begin to run until there has been a repudiation of the trust. *McCosker v. McCosker*, 122 Cal. App. 2d 498, 501 (1954). In an action to establish a trust and for accounting related to resulting trust, the applicable statute of limitations is four years. *Id.*

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CONT... Farhad Mohebbi

Chapter 7

Furthermore, under Cal. Code Civ Procedure §343, an action for relief must be commenced within four years after the cause of action shall have accrued, which may not have even begun pre-petition given the resulting trust theory and lack of any repudiation.

6. Conclusion

Based on the facts and the law of this case the Motion to Dismiss cannot be granted. First, it is replete with questions of fact which cannot be decided in a Rule 12 context. For example, Defendants urge that the court be persuaded by a declaration from their attorney about the bona fides of his documents prepared in connection with the divorce and property separation. But the court is confined to the four corners of the complaint in a Rule 12 motion, and the court cannot say that the theory alleged by the Trustee is so implausible as to run afoul of the Iqbal and Twombly standard. In the complaint, the Trustee has provided grounds for jurisdiction for the bankruptcy court under 28 USC §1334 and 11 USC §§105 and 323. The Trustee has also included allegations enough, if proven, to show why she is entitled to relief and has made several demands for the relief sought, which include declaratory relief and turnover of the Properties and more. None of this is to say that the result might not be different in a Rule 56 context or at trial where the parties may consult the evidentiary record; it is to say, however, that at this stage a statement of the case is made sufficient to defeat a Rule 12 motion.

Deny

Party Information

Debtor(s):

Farhad Mohebbi

Represented By
Halli B Heston

Defendant(s):

Farhad Mohebbi

Represented By
Richard G Heston

Nasim A Mohebbi

Represented By
Richard G Heston

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CONT... Farhad Mohebbi

Chapter 7

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Reem J Bello
Jeffrey I Golden

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
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Thursday, December 3, 2020

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2:00 PM

8: Thomas D. Sands Matter

Chapter 0

Misc#: 2:20-00102 Thomas D. Sands Matter

#30.00 Notice Of Disciplinary Hearing Involving Thomas D. Sands (the "Attorney")

Docket 10

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, December 8, 2020

Hearing Room 5B

10:30 AM

8: -

Chapter

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Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 8, 2020

Hearing Room 5B

10:30 AM

8:20-12585 Dae Young Joung and Erin Joung

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**JPMORGAN CHASE BANK, N.A.
Vs
DEBTORS**

Docket 13

Tentative Ruling:

Tentative for 12/8/20:
Grant. Appearance is optional.

Party Information

Debtor(s):

Dae Young Joung

Represented By
Young K Chang

Joint Debtor(s):

Erin Joung

Represented By
Young K Chang

Movant(s):

JPMORGAN CHASE BANK, N.A.

Represented By
Joseph C Delmotte

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, December 8, 2020

Hearing Room

5B

10:30 AM

8:19-14941 LeAnn Michelle Gause and Tiffany Denise Gause

Chapter 13

#1.10 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 12-01-20)

SCHOOLSFIRST FEDERAL CREDIT UNION
Vs.
DEBTORS

Docket 36

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
AUTOMATIC STAY ENTERED 12-03-20**

Tentative Ruling:

Tentative for 12/1/20:
Grant. Appearance optional.

Party Information

Debtor(s):

LeAnn Michelle Gause

Represented By
Christopher J Langley

Joint Debtor(s):

Tiffany Denise Gause

Represented By
Christopher J Langley

Movant(s):

SchoolsFirst Federal Credit Union

Represented By
Paul V Reza

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, December 8, 2020

Hearing Room 5B

10:30 AM

8:19-14941 LeAnn Michelle Gause and Tiffany Denise Gause

Chapter 13

#1.20 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 12-01-20)

SCHOOLSFIRST FEDERAL CREDIT UNION
Vs.
DEBTORS

Docket 37

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
AUTOMATIC STAY ENTERED 12-03-20**

Tentative Ruling:

Tentative for 12/1/20:
Grant absent post-petition current status or APO.

Party Information

Debtor(s):

LeAnn Michelle Gause

Represented By
Christopher J Langley

Joint Debtor(s):

Tiffany Denise Gause

Represented By
Christopher J Langley

Movant(s):

SchoolsFirst Federal Credit Union

Represented By
Paul V Reza

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, December 8, 2020

Hearing Room 5B

11:00 AM

8:18-13420 Kevin Sadeghi

Chapter 7

#2.00 Trustee's Final Report And Applications For Compensation:

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

LAKE FOREST BANKRUPTCY, ATTORNEY FOR CHAPTER 7 TRUSTEE

U.S. BANKRUPTCY COURT, CHARGES

GROBSTEIN TEEPLE LLP, OTHER PROFESSIONAL FEES

Docket 61

Tentative Ruling:

Tentative for 12/8/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Kevin Sadeghi

Represented By
Allan O Cate

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, December 8, 2020

Hearing Room

5B

11:00 AM

8:14-17318 Antoine A Johnson and Kelly J Johnson

Chapter 7

**#3.00 Motion for Order Disallowing Debtors' Claimed Exemption and Requiring Turnover of Non-Exempt Funds
(cont'd from 11-03-20)**

Docket 36

Tentative Ruling:

Tentative for 12/8/20:

The court incorporates herein its previous tentative from Nov. 3. At the Trustee's suggestion the court continued the hearing to a date which would allow determination of the body of claims after a claims bar, which was thought to be a modest number ,thereby creating a path to settlement. What is the status?

Tentative for 11/3/20:

This is the chapter 7 trustee, Jeffrey Golden's ("Trustee's") motion for order disallowing debtors Antoine and Kelly Johnson's ("Debtors'") claimed exemption and requiring turnover of non-exempt funds. Debtors oppose the motion.

1. Background

Debtors filed a Voluntary Petition under Chapter 7 on December 19, 2014. Jeffrey I. Golden was the duly appointed and acting Chapter 7 Trustee of the resulting Estate. After investigation of the affairs of the Debtors, including a review of the schedules and statements and questioning of the Debtors during a Trustee Meeting under 11 U.S.C. § 341(a), Trustee found no assets to be administered, and filed a "no asset report" on February 2, 2015. The Debtors received their discharge on April 6, 2015, and the case was closed the following day.

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Central District of California
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Judge Theodor Albert, Presiding
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Tuesday, December 8, 2020

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5B

11:00 AM

CONT...

Antoine A Johnson and Kelly J Johnson

Chapter 7

Thereafter, Trustee received correspondence dated October 10, 2019 from Archer Systems, LLC ("Archer"), the court-appointed settlement administrator in multi-district litigation relating to an allegedly harmful diabetes medication apparently prescribed to Debtor Antoine A. Johnson. According to the correspondence, the Debtors retained counsel to stake their claim ("Claim") in the product liability litigation, based upon an injury date of September 8, 2014, which was pre-petition. The Claim is apparently in the process of being cleared for settlement in a gross amount of \$466,400, with a projected net of approximately \$260,924.53.

Trustee notified Archer on October 15, 2019 that the Estate has an interest in the Claim, which was not scheduled by the Debtors or disclosed to Trustee, and which therefore remained property of the Estate even after the closing of the case under 11 U.S.C. § 554(d) (assuming the September 8, 2014 date is accurate). At Trustee's request, the Office of the United States Trustee filed a motion seeking the reopening of the case for the administration of the Claim. The motion was granted by Order entered March 19, 2020, and Trustee was reappointed. (See Docket, Exhibit "A", Docket Nos. 29, 30.) Five months later, the Debtors filed amended Schedules B and C, adding the Claim as an asset (identified as "Personal Injury Claim Settlement"), valued at \$259,000, and claiming the Claim as exempt in full under Cal. Civ. Proc. Code § 704.140(b).

2. Is the Asset Property of The Estate and/or Exempt?

The answer, as Trustee argues, is that it is probably too early to decide. Debtors argue that Trustee's motion fails to sufficiently link the settlement to the pre-bankruptcy past, which is the test Trustee's motion must pass. See 11 U.S.C. §541(a)(1). Further, Debtors argue that even if Trustee could establish such a connection, the asset would be exempt under Cal. Civ. Proc. §704.140, which exempts awards of damages or settlements arising from a personal injury to the extent necessary to support a spouse or dependents of the judgment debtor. Trustee asserts that he has reason to believe that he can show such a link to the period prior to Debtors' bankruptcy case, including using Debtors own schedules. At present, Trustee, the date of

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Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, December 8, 2020

Hearing Room

5B

11:00 AM

CONT... **Antoine A Johnson and Kelly J Johnson**

Chapter 7

Debtor's initial injury is not known, which makes assessing whether the estate has an interest impossible or at least difficult at this point. As to the claim of exemption, Trustee cites *In re Milden*, 1997 U.S. App. LEXIS 7726 at *18 (9th Cir. 1997) citing *In re Haaland*, 89 B.R. 845 (Bankr. S.D. Cal. 1988), aff'd in part, rev'd in part on other grounds *sub nom. Haaland v. Corporate Management, Inc.*, 172 B.R. 74, 77 (S.D. Cal. 1989) for the proposition that the exemption under § 704.140 does not apply to past earnings. Trustee asserts that there is no evidence to establish when Mr. Johnson became disabled, or what the value of his lost wages would have been from that point to the date of filing. Thus, Trustee concludes, the non-exempt portion of the Estate's interest in the Claim is an unknown, at present.

Trustee suggests continuing this matter to a date in mid-December because the claims bar date is November 30. Trustee asserts that, to date, claims total only \$8,381.18. A continuance to a date in mid-December would allow for the establishment of the body of creditors, the presentation of additional evidence concerning lost wages, and possible settlement negotiations concerning a reasonable resolution of the Estate's interest in the proceeds. Debtors argue that principles of equity tilt toward finding in their favor. However, if the asset is property of the estate, then it should be made available for distribution to Debtors' pre-petition creditors and the question is whether any part is exemptible. Thus, Trustee probably has the right of it. Also, Trustee points out that because the issue is properly framed as a proceeding to determine the validity, priority, or extent of a lien or other interest in property, ownership of the asset must be determined through an adversary proceeding.

Continue to December 8 @ 11:00 a.m.

Party Information

Debtor(s):

Antoine A Johnson

Represented By
Douglas L Weeks

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 8, 2020

Hearing Room 5B

11:00 AM

CONT... Antoine A Johnson and Kelly J Johnson

Chapter 7

Joint Debtor(s):

Kelly J Johnson

Represented By
Douglas L Weeks

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 8, 2020

Hearing Room 5B

11:00 AM

8:20-11350 Jae Kook Jun and Jee Hee Jun

Chapter 7

#4.00 Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property)

Docket 12

Tentative Ruling:

Party Information

Debtor(s):

Jae Kook Jun

Represented By
Andrew S Cho

Joint Debtor(s):

Jee Hee Jun

Represented By
Andrew S Cho

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, December 9, 2020

Hearing Room

5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1617856928>

ZoomGov meeting number: 161 785 6928

Password: 337983

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 9, 2020

Hearing Room

5B

10:00 AM

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Chapter

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Tentative Ruling:

- NONE LISTED -

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8:17-10517 Lisa Hackett

Chapter 11

#1.00 CONT Scheduling And Case Management Conference

[fr: 6/7/17, 9/6/17, 12/6/17, 1/10/18, 2/28/18, 8/29/18, 3/13/19, 10/2/19, 2/12/20, 4/1/20, 7/22/20]

Docket 1

Tentative Ruling:

Tentative for 12/9/20:
Why no updated status report?

Appearance: required

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Lisa Hackett

Pro Se

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8:17-14351 Freda Philomena D'Souza

Chapter 11

**#2.00 STATUS CONFERENCE RE: Motion Pursuant To 11 USC 1142 and 11 USC 105 to Require Creditor To Complete Novation Contained Within The Confirmed Chapter 11 Plan
(cont'd from 9-23-20)**

Docket 149

Tentative Ruling:

Tentative for 12/9/20:
Further continuance to accomplish re-documentation? Appearance optional.

Tentative for 9/23/20:
Grant absent compelling showing for either denial or further delay.

Tentative for 7/22/20:
Creditor requests a continuance. The court will grant a continuance to a convenient date.

Party Information

Debtor(s):

Freda Philomena D'Souza

Represented By
Michael Jones
Sara Tidd

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8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

#3.00 STATIS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 10-14-20)

Docket 1

Tentative Ruling:

Tentative for 12/9/20:

See ##4 and 5. Are the stipulations mentioned in the papers now in hand?

Appearance: required

Tentative for 10/14/20:

See #6.

Tentative for 9/2/20:

See #12.

Tentative for 8/5/20:

No tentative. See #4.

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Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's

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website has been updated with this new information.

Tentative for 5/27/20:

See #8 and 9.

Tentative for 4/8/20:

No status report filed? See #12 and #13. Continue to coincide with confirmation hearing. Appearance is optional.

Tentative for 2/5/20:

Continue status conference. Continue approximately 60 days to allow analysis of plan and disclosure statement due 2/28/20.

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.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By

Misty A Perry Isaacson

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#4.00 Motion to Use Cash Collateral
(cont'd from 10-14-20)

Docket 5

Tentative Ruling:

Tentative for 12/9/20:
Assuming confirmation is this moot? See #5

Tentative for 10/14/20:
See #6.

Tentative for 9/2/20:
Continue on same terms and condition through October 14, 2020 to coincide with confirmation hearing.

Tentative for 8/5/20:
This is an oft-continued request for use of cash collateral. As the court recalls, there is only a very marginal slice of equity in the collateral. The court has repeatedly stated (starting in November) that status quo cannot be expected to last indefinitely, and the tentative from last time (5/27) said one last extension would be granted. But the court observes now that somehow confirmation of the plan has moved to September 2. The June MOR shows a dwindling cash balance. To exacerbate the court's concern, no further status report is offered, although Ms. Altieri does file a declaration suggesting that everything is unfolding more or less as expected, with only a temporary lull in rental payments due to the pandemic. Unless the secured creditor is willing to go along further the court sees little encouragement on this record or reason to continue the use beyond September 2. So, despite the court's earlier

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admonition we should continue on the same basis until the continued confirmation hearing, but further continuances of that date should not be expected and, if sought, had better include the secured creditor's acquiescence as it may be without further use of cash collateral. It probably also goes without saying that the proposed plan should be the very best possible as further time is not assured.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, the court encourages telephonic appearances through CourtCall on all matters other than evidentiary hearings. Telephonic appearances may be arranged by calling (866) 582-6878. If personal appearance is intended, please call the Courtroom Deputy at (714) 338-5304 by 4 p.m. the day before. Otherwise, the doors to the courtroom will be locked.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through September 30, 2020. The Court's website has been updated with this new information.

Tentative for 5/27/20:
see #9. Continue on same terms one final time.

Tentative for 4/8/20:
Continue on same terms pending confirmation hearing. Appearance is optional.

Tentative for 2/5/20:
Continue use on same terms pending continued status conference.

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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?

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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#5.00 Confirmation Of Chapter 11 Plan
(set from 4-08-20 discl stmt hrg)
(cont'd from 10-14-20)

Docket 66

Tentative Ruling:

Tentative for 12/9/20:

It would appear that there is no remaining opposition to confirmation, the issues of plan treatment of the judgment creditor having been resolved by stipulation. This assumes the previous opposition of U.S. Bank has been resolved. Confirm as modified by stipulation.

Tentative for 10/14/20:

This is a hearing on confirmation on the debtor's Amended plan. This hearing was continued at least twice from May 27, 2020 to address some of the issues identified in the court's tentative ruling of that date, which tentative opinion is incorporated herein. The major remaining issues are cramdown interest rate and feasibility. The debtor has offered the expert opinion of J. Michael Issa, principal of the financial advisory firm, GlassRatner Advisory & Capital Group attached to his declaration of August 10, 2020.

The objecting creditor, judgment creditor Stephanie Bryson, Class 2E, has filed an opposing brief but no expert opinion. It is unclear whether U.S. Bank, Class 2B, who filed an objection to confirmation considered in the May 27 tentative, still opposes. The major obstacles to confirmation are considered below:

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**Rosemaria Geraldine Altieri
1. Cramdown Interest Rate**

Chapter 11

The court cannot confirm the plan over the objection of an impaired class of secured creditors, such as Bryson, unless the court determine under the relevant portion of §1129(b)(2)(A)(i) that the payments promised under the plan provide the present value of the secured claim. As both sides acknowledge, the present value analysis is the mirror image of interest rate. So, the promised interest rate (in this case of 5% interest only over 180 monthly payments, or 15 years) leaves a balloon of \$330,386 due in full at the end of the plan term. The question is, adjusted for all *appropriate* market and risk factors, does this treatment amount to the present value of the claim, which appears to be the full \$330,386? The parties seem to agree with this court's conclusion expressed in *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010), and as expressed in other authorities, that a plan may not by cramdown impose uncompensated risk on the objecting secured creditor. So, to determine the appropriate rate a variety of circumstances/factors must be evaluated. Among these are market interest rates adjusted for such factors as residential vs. commercial, inflationary pressures generally, terms of repayment and the like. To be clear, there is never a true "market" rate analysis because no lender will voluntarily make the proposed treatment as a new loan; if that were the case, one presumes the debtor would refinance. Instead, the court in cramdown analysis looks at all applicable factors to find as near a proxy as possible, one that appropriately reflects all the factors adjusted for circumstances.

One such factor here is that the proposed treatment of Class 2E is for interest only, with no amortization of principal at all. In some situations, this might be thought to be a factor somewhat lowering interest rates on shorter term loans where the principal is well protected. But in a situation like this one, where the "borrower" is a debtor in possession and proposes a long term plan (15 years), who apparently lacks the resources to amortize the principal at all, on balance the court regards this as a riskier proposition and a factor creating upward pressure on interest rates to compensate for that risk. See

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e.g. *In re McCombs Properties VIII*, 91 B.R. 907, 910-12 (Bankr. C.D. Ca. 1988). Neither side analyses this factor in any helpful way.

Mr. Issa opines that a *Till* approach, which takes a near riskless rate such as prime rate and then adds a few points as adjustments (in a vague, somewhat arbitrary and unexplained manner) is not appropriate for this case. The court agrees, not only because the *Till* court relied upon the prime rate, which is not used in real estate loans, but also because that was a truck loan in a Chapter 13 of short duration. Therefore, the analysis appropriate to a longer-term real estate loan relies on fundamentally different analysis.

A closer line of authority is this court's opinion in *North Valley Mall*. In *North Valley Mall*, this court opined that a more principled approach was to break a proposed treatment as a "loan" analyzed in tranches, that is, a percentage of a 100% LTV loan can be thought of in at least three segments, or tranches, a percentage equating to more or less conforming loans, say up to 70% LTV, for which there is usually abundant data in the marketplace because real lenders make real loans on this basis every day. Sure, some adjustment is made for poor or no credit, or other factors such as conforming vs non-conforming, but there is still abundant data available. The trickier portions of the *North Valley* approach is fixing the second, or mezzanine tranche of say the next 20% of riskier "hard money" loans (usually in the range of 7 or 8%) combining to 90% LTV, and the very trickiest in the last 10% up to 100% of value, where no lender (outside maybe the Mafia) would touch the transaction on any basis. A suitable proxy in *North Valley* for that last tranche was said to be the average of what equity investors into highly leveraged transactions would expect as a return. This is usually quite a high number, say 20% per annum, as was the case in *North Valley Mall*. Then the court combines the tranches in weighted fashion to reach a blended rate for cramdown.

Bryson analyses the proposed rate using the *North Valley* approach, argues that 5% is therefore way too low and instead suggests the *North*

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Valley approach would yield a blended rate of 10.5%. Unfortunately, no expert is retained on behalf of Bryson. Mr. Issa does not utilize *North Valley* but adopts instead a "modified market rate" approach. Mr. Issa acknowledges that "an efficient market for traditional debt" does not exist for the Chandler property because there is, at best \$25,000 or so of value therein for the Bryson lien to attach to behind almost \$700,000 of senior debt. Thus, this property is well over 100% LTV and effectively yielding almost no collateral value at all (maybe 4% in Mr. Issa's view) after costs of sale. Mr. Issa correctly observes that no lender would touch this on any basis and even under a *North Valley* approach nothing but the very highest tranche (the so-called equity investor tranche) exists to add to the blended rate on a partially secured basis. He does opine, however, that "an efficient market likely does exist..." for the Bryson position on the Adams Street property which he observes attaches to about \$278,000 of value behind \$825,828 of senior debt. He calls this a 75% LTV situation, but the court is somewhat confused unless what he means is this is only compared to what the court in *North Valley* called mezzanine debt, i.e. effectively hard money loans into heavily mortgaged situations with correspondingly higher rates based on increased risk. He does seem to acknowledge that in any event the analog for market analysis has to be on 100% LTV situations for the combined loan structure, but since Bryson is in junior most position, the only apt comparison *for her position* is to the riskier portion of the mezzanine tranche or even to the leveraged equity positions only. In other words, the comparison is not like in *North Valley* to blended rates where a single loan is broken into tranches and then re-blended, *but instead only to the riskiest junior positions.*

Mr. Issa opines the appropriate rate is 7.1% for the Boston area "for this product." He cites in a footnote to an article by Eisfeldt and Demers from the National Bureau of Economics Research dated December 2015. Well, maybe, but the court would be very surprised to see that the conditions regarding that investment data are in any way comparable to those present in this case. To be comparable, the investments would have to have been into

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very highly leveraged situations, that is, where the "equity" investment is behind maybe 80% LTV of existing debt. The court does not doubt that some investors would venture into such situations but would be extremely surprised to see only a demand for 7.1% annualized return in comparable situations. Indeed, the court "googled" the Einfeldt and Demers paper. It is 56 pages of somewhat dense and technical economic jargon. It looks to the court's reading that while at page 42 in a table there is reference to a 7.1% rate of return in the Boston area, insofar as the court can understand it, this represents an overall investment return rate into rental housing generally, not particularized so as to correspond to only highly leveraged investments such as pertains here. So, the court is left to doubt the "market rate" analysis at any level.

At pp. 8-9 of his report Mr. Issa does opine that an approach would be to blend a 3.22-3.95% rate pertaining to 75% LTV loans on investment properties generally with the 7.1%. But again, it is left very unclear that the 75% LTV rate is comparable to what we have in the case at bar. The comparison here is not to loans up to 75% of value, *but to hard money loans behind 75% existing debt* thus 100% LTV, a much riskier pool which assuredly commands a higher rate. So, the conclusion he reaches at page 9 of the report that on a blended basis the rate should be near 5% is very suspect. He does opine at pp. 10-11 that the court can reinforce the loan rate with a total debt to net income ratio in this case (\$151,536 combined income to total debt as called for in the plan of \$122,114) which he says is within the standard debt service coverage ratio of 1.22x, or within the "standard metric" of between 1.2 to 1.4% used in financing of income property [but see feasibility analysis infra]. But another unsupported assumption is utilized in attempting to reconcile the 7.1% equity investment rate and the 3.22-3.95% market rate for 75% LTV properties for a resulting average of about 5%; he simply averages the two rates together. (see footnote 11). He does not attempt to weight either result. No explanation is offered for this approach and, as the court observes, even the 7.1% rate is highly suspect since it is left

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unclear that such a number corresponds to investments in income properties in the Boston area generally, or more usefully to a particularized rate of investments into highly leveraged properties only. In sum, the opinion does not persuade the court that 5% is anywhere near the appropriate rate to yield "present value" even before one considers any further boost required to deal with the fact that the loan in question is non-amortizing, interest only.

2. Feasibility

As Mr. Issa analyzed it, the income to debt ratio is 1.22x. But that assumption depends on getting a very low cramdown interest rate, such that the yearly debt service for the Bryson obligation is only \$16,519. But if the cramdown rate is more like 10% or about \$33,000 per annum the total debt service amounts to more like \$140,595, or in ratio terms 1.07x. Granted, this is still within (barely) the stated expected net income of \$151,536. But the proposal to not amortize the obligation at all creates a whole additional set of issues. If the obligation is fully amortized at 10% over 15 years, the payment jumps to \$3550 monthly or \$42,600 annually which bumps debt payments to almost exactly projected income. Who knows what markets will look like in 15 years, and no details are given that the court sees telling us just how debtor will be able to refinance the property when the balloon comes due? Also, debtor relies on various assumptions such as the bonus component of her income will remain steady at an average of \$12,000 per annum, or that repairs, and maintenance of the properties will remain manageable within existing budget.

3. Conclusion

The plan is not "fair and equitable" as pertains to the objecting creditor, Bryson, in that the cramdown interest rate of 5% fails to account properly for all risks and thus does not yield present value of the secured claim. The plan cannot be confirmed as written for that reason. Also, debtor bears the burden on proving not only that issue but the related issue of feasibility. On

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feasibility, if the interest rate is adjusted to give present value the resulting budget is extremely tight. The court is agnostic on the question of whether it is, nevertheless, sufficient since feasibility does not mean guaranteed performance, only more likely than not.

Deny. The court will hear argument as to where we should go from here.

Tentative for 5/27/20:

This is the hearing on confirmation of debtor's plan. It is opposed in objections filed by two creditors.

A. Bryson

The first objection comes from judgment creditor from Class 2E, Stephanie Bryson ("Bryson"). Bryson obtained a judgment against Debtor in the amount of \$270,658.85. Bryson has liens on two properties located in Massachusetts, the Chandler property and the Adams property. The Chandler property was valued at \$775,000 (though Bryson values it at \$795,000). The Adams property was valued at \$978,300 (Bryson values it at \$1,240,000).

The plan proposes to pay off debt of \$330,386.91 (as of 10/22/19) over a period of 180 months, with monthly "interest only" payments of \$1,376.61, then a balloon payment of \$330,386.91 at the end of the plan.

Bryson argues that the plan does not satisfy the best interest of creditors test. Bryson does not believe that the Debtor's liquidation analysis is accurate, due partly to the undervaluing of the encumbered properties. If Bryson's fair market valuations are used instead of Debtor's, then the result is a net positive instead of negative. Bryson concedes that after administrative

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costs were factored in a chapter 7 liquidation there would still be nothing left for unsecured creditors, whereas the current plan provides for at least some recovery for unsecured creditors. Despite this fact, Bryson argues that the plan still cannot be considered fair and equitable.

Specifically, Bryson argues that the 5% interest rate contemplated in the plan is not adequate to account for the risks involved. Bryson is not a lender and her Massachusetts judgment accrues interest at 12% per year. Bryson asserts that she could foreclose on the Massachusetts properties, which would pay the judgment debt in full. Bryson asserts that the plan also has feasibility issues, and the interest rate must be adjusted to account for that risk.

Bryson asserts that the plan relies on rental income from two properties in Massachusetts. Any unplanned or prolonged vacancy throws the plan into doubt. Furthermore, Bryson asserts that Debtor's financial history suggests that her projected income is optimistic to say the least. The properties are also old and may need repairs over the life of the plan. Those repairs could come at significant cost, which again, would jeopardize the plan. The supplement to the Bryson opposition states that Debtor is including a \$16,000 annual bonus from her employer, Clean Energy. However, it appears that the bonus will be in the form of stock, not cash. Thus, Bryson concludes that the plan is simply not feasible and should not be confirmed. Not raised by Bryson, but of concern to the court, is what happens at the end of 180 months on the balloon? One imagines that the debtor will either refinance or sell, but the prospect of so doing should at least be explained. Interest-only, non-amortizing lien treatments are inherently riskier than fully amortizing. This is because the creditor is never put in a position of comfort on its principal, but always hangs on the precipice. There may be a further complication here in that Massachusetts rate of interest on judgment liens is reported to be 12%, which means that the balance will actually increase over time, unless it is intended that the cramdown rate supplant the state judgment

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rate. That point needs clarification and briefing.

This is not inherently unconfirmable, but the fundamental precept is that the risks imposed must be fully paid. In the court's view, 5% is too low to accomplish "present value" under §1129(b)(2)(A) considering this point and that Bryson appears to be in second position, with little or no cushion. See *In re North Valley Mall*, 432 B.R. 825 (Bankr. C.D. Cal. 2010). Debtor argues for the prime plus approach found in *Till* and argues that *North Valley Mall* is distinguishable. But her argument is not convincing. What is the principled difference between a judgment lien and a defaulted loan? They are both 'allowed secured claims' and that is what the Code requires be given present value if paid over time. Debtor confuses resort to market data to help analyze what is present value (an economic concept informed by data) with the fact that most data available happens to originate in the loan marketplace. That is because lenders consult varied data when deciding whether to extend credit, and many factors such as collateral value and creditworthiness go into the analysis. That is a process done before the fact. But that does not change the fact that both are secured claims being paid over time so their origin seems immaterial *after the fact* where the court in cramdown analysis is asked to make a determination of factors in situations where no real market exists. Even if the court could be persuaded that the *Till* approach (which was after all about a truck loan and seemingly even less relevant) were correct, a 1.75% adjustment is still way too low.

B. U.S. Bank National Association

The real property that is the subject of this Objection is located at 33 Chandler Street, Newton, MA 02458 (the "Property"). Creditor holds a security interest in the Property as evidenced by a Note and Mortgage executed by the Debtor. Said Note and Mortgage are attached to Creditor's proof of claim (the "Proof of Claim") which was filed in the instant case as Claim No. 5-1.

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The Proof of Claim provides for a secured claim in the amount of \$590,127.29. This amount has increased since the petition date as interest has accrued and Creditor has made post-petition escrow advances to protect its interest in the Property. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. Creditor's claim is treated in the Plan under Class "2B." The Plan provides that the Debtor will pay Creditor's claim the amount of \$590,127.29, over 360 months (30 years) at 4.625% interest, with equal monthly payments of \$3,034.08.

The Plan fails to provide for maintenance of property insurance and timely payment of property taxes. The Plan should specify whether Debtors intend to maintain property insurance and tax payments directly or through establishment of an escrow account with Creditor. Creditor has advanced approximately \$7,597.52 for post-petition property taxes on account of the Property. The Plan does not provide for reimbursing Creditor for such advances which were made post-petition for the benefit of the estate. Such advances qualify as administrative expenses and must be cured on or before the effective date of the plan.

The Plan indicates that the value of the Property is \$775,000.00. The current payoff balance for Creditor's claim through June 10, 2020 is \$617,465.04. The plan provides for a total secured claim in the reduced amount of \$590,127.29. As the plan fails to provide for the full amount of Creditor's secured claim, Debtor's Plan cannot be confirmed as is, and the portion that is payable as an administrative claim must be dealt with.

C. Conclusion

The objections raise some good points regarding feasibility. According to Bryson, Debtor's own financial data demonstrate that she will not be able to

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make good on the plan payments. This plan appears to have a very (perhaps overly) optimistic outlook on Debtor's finances. Further, expenditures that may be necessary are not addressed at all, like insurance, maintenance, and the fact that there may be a \$7597.52 administrative claim.

Debtor points out that Bryson has not provided any analysis as to what the appropriate interest rate would be. Debtor also points out that under the plan, unsecured creditors get at least some recovery, whereas in a liquidation, they would receive nothing. While, of course, the court wants unsecured creditors to get something, this does not substitute for the fact that it is debtor's burden to prove not only feasibility, but that cramdown treatment is providing the present value of the objecting secured claims and that this plan is better than liquidation. This has not been done. Furthermore, Debtor asserts that the First Amended Plan provides that all secured creditors encumbering the Rental Properties will receive deferred cash payments totaling the allowed amount of their claims while retaining their liens on the Rental Properties. But this assertion is devoid of analysis and, on a true present value basis, probably wrong. As Debtor's plan seems to be premised on everything going as planned over the 15 (or even thirty) years of this Chapter 11 plan, with little or no wiggle room, and while not even apparently dealing with all likely expenses, the court requires Debtor to answer Bryson's concerns about feasibility. Given the current economic climate, Debtor should account for the realistic probability of sustained occupancy in the rental properties as well as her own employment prospects.

No tentative. Continue for approximately 30 days to afford one final opportunity to fill in the gaps.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

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The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Tentative for 4/8/20:

The purpose of a disclosure statement is "to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan." Duff v. U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996). "Adequate information" is defined under 11 U.S.C. Sec. 1125(a)(1) as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interest of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan."

Bryson's objections notwithstanding (though feasibility seems questionable), the DS appears to provide adequate information. It is also worth noting that the DS has not drawn any other opposition. The plan may ultimately not be confirmable if feasibility proves too speculative, as it very well might be given the current economic climate, or if cramdown is attempted and the value of the rental properties is too low as Bryson has alleged, suggesting that creditors will do better in a liquidation (the so-called best interest of creditors test). Debtor will have the burden on these issues in order to achieve confirmation, but at this stage, the DS does not appear deficient from an *information* standpoint, especially with the detailed risk factors analysis.

Grant. Set confirmation date and deadlines.

Appearance is optional.

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CONT... Rosemaria Geraldine Altieri

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Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By
Misty A Perry Isaacson

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8:20-10958 Bradley Ray Fox

Chapter 11

#6.00 Motion For Order: (1) Authorizing Sale Of Real Property, Free And Clear Of Liens Pursuant To 11 U.S.C. §363(b) and (f); And (2) Approving Overbid Procedure
[2545 Iris Way, Laguna Beach, California]

Docket 75

Tentative Ruling:

Tentative for 12/9/20:

This is a motion to sell real property free of liens, with liens attaching to proceeds under §363(f). The motion is opposed by several creditors, but some of those objections seem to have been resolved. The Bank's conditional opposition is resolved if its lien gets paid from escrow, which appears to be acceptable to debtor. The objection of Jennifer Fox French who holds a domestic claim is resolved by depositing the net proceeds in an account along with the claimed homestead pending further order. The objections of Scullion and Aguirre, who are general unsecured creditors, is easily disposed of. The price obtained is reportedly the best available under the circumstances and no real reason to disagree papers in the papers. Reportedly, debtor is unable to further service the mortgage debt so the possibility of relief of stay and foreclosure looms, wiping out the recovery of all creditors. Besides, if the property is being sold under market the objectors could make their own offer.

Grant.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Michael G Spector
Vicki L Schennum

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8:20-12963 World of Dance Tour Inc.

Chapter 11

#7.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual.

Docket 1

Tentative Ruling:

Tentative for 12/9/20:
See #8

Party Information

Debtor(s):

World of Dance Tour Inc.

Represented By
Fred Neufeld

Trustee(s):

Mark M Sharf (TR)

Pro Se

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8:20-12963 World of Dance Tour Inc.

Chapter 11

#8.00 Motion To Dismiss Bankruptcy Case Pursuant to 11 U.S.C. 1112(b)

Docket 35

Tentative Ruling:

Tentative for 12/9/20:

This motion to dismiss is brought by creditors Al Hassas and Sweet Lemons, LLC ("Movants") as a bad faith filing pursuant to 11 U.S.C. § 1112(b). Debtor opposes the motion.

1. Background

The relationship between the Movants and the Debtor goes back to February 4, 2015, at which time the Debtor engaged the Movants as consultants, on a non-exclusive basis, to generate, negotiate and/or manage various business opportunities for Debtor in connection with Debtor's "World of Dance" Brand. Jonelis Decl., ¶2, Ex. A. In exchange and in consideration for the Movants rendering of consultant services, the Debtor agreed, along with other consideration including an Executive Producer Credit on the show, to pay the Movants a pre-determined percentage of all gross monies and other consideration ("GMOC") received by Debtor in connection with the various business opportunities that arose out of or related to the Movants' services (the "Projects") and afford the Movants the option to purchase certain shares of Debtor's voting common stock at an exercise price of One Dollar Fifty Cents (\$1.50) per share pursuant to a mutually agreed vesting schedule as set forth in the Agreement. *Id.* With respect to any Projects concerning Debtor's production of domestic or international television programs featuring the "World of Dance" Brand, Debtor agreed to pay the Movants forty percent (40%) of the GMOC received by Debtor in connection therewith.

During the Movants' consultant services, the Debtor reportedly established a successful and highly profitable business relationship between

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with Universal Television, LLC, which resulted in Debtor's production of the NBC television program World of Dance (the "WOD TV Show"). Jonelis Decl., ¶3. From April 2016 until April 2017, the Debtor paid the Movants 40% of the GMOC received by the Debtor in connection with WOD TV Show without objection. Jonelis Decl., ¶4. However, in April 2017, despite allegedly having continued to receive substantial GMOC from Universal in connection with the WOD TV Show, and despite allegedly having previously paid the Movants 40% of its GMOC from the Show, according to Movants Debtor suddenly and unexpectedly refused to pay the Movants any further monies. *Id.* Litigation in state court followed.

Movants provide a lengthy recitation of the procedural history of the contentious litigation, the settlement, Debtor's breach of that settlement, efforts to recuse various judicial officers and finally, for our purposes, the large arbitration award in favor of Movants in the approximate amount of \$715,000. On the eve of the expected hearing in state court on the arbitration award confirmation, Debtor filed the petition initiating this bankruptcy proceeding.

2. Was Debtor's Filing Made in Bad Faith?

Bad faith filing of a Chapter 11 Petition is cause for dismissal. *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828, 829 (9th Cir. 1994). In *Marsch*, the court noted that "although section 1112(b) does not explicitly require that the cases be filed in good faith, courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 Petition establishes cause for dismissal." *Marsch* 36 F.3d at 828. "The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy efficient reorganization on a feasible basis". *Marsch*, 36 F.3d at 828-829, citing *In re Arnold*, 806 F.2d, 937, 939 (9th Cir. 1986).

When the verbiage is stripped to its essence, what this case essentially comes down to is Debtor's claim that, due to massive financial losses suffered as a result of the pandemic, it simply cannot afford to pay the arbitration award or post an appeal bond, at least not in lump sum. Therefore,

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Debtor argues, it (and creditors) would benefit from reorganizing, which is a proper purpose under Chapter 11. Movants believe, based on Debtor's alleged conduct in prior proceedings, that Debtor is simply engaging in more obstructive gamesmanship and attempting to hinder the confirmation of the award or possibly trying to avoid paying it at all. Movants allege that Debtor has dramatically undervalued or failed to disclose property of the estate. For example, Movants assert that Debtor has intellectual property of considerable value but failed to attribute much or any value to it. Finally, Movants note that, except for the arbitration award, Debtor has few if any other creditors, which Movants argue, leads to the inescapable conclusion that when all of Debtor's sources of revenue are disclosed and properly valued, Debtor will be solvent, and thus will have no valid bankruptcy purpose in this Subchapter V.

But Movants' analysis is grossly simplistic. Even if the court could indulge the speculation that certain assets allegedly comprised of expected revenue streams were as valuable as Movants allege (and Debtor denies), no one seriously alleges these assets could be instantly monetized enough to pay the arbitration award. Rather, Debtor plausibly argues that it will need time through reorganization to preserve those streams of income and/or to undertake rehabilitative efforts to restore the business longer term.

Although Movants create a picture of bad faith on Debtor's part based on past conduct up to and possibly including this bankruptcy proceeding, it is likely too early to dismiss this case as a bad faith filing simply because we do not have enough information upon which to decide. The court is sympathetic to Movants' frustration. There may be a better and more efficient alternative available. According to the docket, Movants have not yet moved for relief from the automatic stay as this case was only filed a little more than a month ago. A motion for relief from the automatic stay, if granted, would allow Movants to confirm the arbitration award in state court (but not to undertake levies), which should not take long as the state court was reportedly on the cusp of doing so anyway. Allowance of a disputed claim will be an indispensable step in any event. This court has absolutely no inclination to second guess the efforts of the Superior Court in that matter, and abstention to allow liquidation of the claim (but not levies) would almost certainly be granted.

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Additionally, a Subchapter V case is not exactly a picnic. It is by design on an expedited timetable. A plan and possibly a disclosure will be required in very short order. Moreover, the Debtor has the appointed Trustee to contend with who will need to be, at least on a preliminary basis, convinced of a reasonable best effort in a proposed plan, especially if, as appears this case may require an attempted cramdown of 90% of the allowed debt. The Debtor can see what is ahead and should not expect extensions absent demonstrated ability to put something meaningful together in short order. If that cannot be done, then another motion to dismiss or convert will be entertained.

Deny

Party Information

Debtor(s):

World of Dance Tour Inc.

Represented By
Fred Neufeld

Trustee(s):

Mark M Sharf (TR)

Pro Se

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8:15-13008 Anna's Linens, Inc.

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#9.00 Final Hearing Re: Motion to Approve Compromise By and Between the Chapter 7 Trustee, On the One Hand, and Linda Martz-Gomez, On Her Own Behalf and On Behalf of Others Similarly Situated, On the Other, As to the Claims Asserted Against the Estate in Class Action Adversary Proceeding No. 8:15-ap-01293-TA, Pursuant to F.R.B.P. 9019 and 7023
(cont'd from 10-13-20)

Docket 2809

Tentative Ruling:

Tentative for 12/9/20:

It appears that there are no continuing objections and that no class member has opted out or opposed the settlement. If that is correct, approve.

Tentative for 10/13/20:

This is a motion to approve compromise by and between the chapter 7 trustee, Karen Sue Naylor ("Trustee") on the one hand, and Linda Martz-Gomez ("Plaintiff"), on her own behalf and on behalf of others similarly situated, on the other, as to the claims asserted against the estate in class action adversary proceeding no. 8:15-ap-01293-TA, Pursuant to F.R.B.P. 9019 and 7023. The motion is joined by the Plaintiff. The motion is opposed by Anna's Linens, Inc.'s ("Debtor's") former President and CEO, Scott Gladstone ("Gladstone").

1. Background

The Debtor filed a voluntary Chapter 11 on June 14, 2015 (the "Petition Date"). An Order Converting Case to Chapter 7 was entered on

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March 30, 2016 (the "Conversion Order") [Dkt. No. 1455]. Trustee was appointed on March 31, 2016 [Dkt. No. 1458]. Debtor was a specialty retailer offering home textiles, furnishings, and décor through a chain of 261 company owned retail stores throughout 19 states in the United States, including Puerto Rico and Washington, D.C. It was headquartered in Costa Mesa, California, and employed a workforce of over 2,500. As of the Petition Date, the Debtor remained in operation but immediately thereafter requested that the Court authorize the commencement of asset sales and store closures, which were intended to complete liquidation of the Debtor's operating assets in short order. Various employees were terminated on about June 19, 2015, without the distribution of notices allegedly required under either the WARN Act or CAL-WARN Act.

A. The WARN Act Adversary Proceeding.

Certain employees of the Debtor contend that the Debtor's post-petition termination of their employment was in violation of the WARN Act or CAL-WARN Act, and on July 1, 2015 filed their Class Action Adversary Proceeding Complaint [Violation of Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 – 2109 and California Labor Code §§ 1400 et seq.] (the "Adversary Complaint"), commencing the Adversary Proceeding [Adv. Dkt. 1]. Linda Martz-Gomez, a district manager employed by the Debtor in Texas, filed the Adversary Complaint in her capacity as Class Representative.

By the Adversary Complaint, the Class Representative sought damages, on an allowed first priority administrative claim basis pursuant to 11 U.S.C. § 503(b)(1)(A), in an amount "equal to the sum of: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay pension and 401(k) contributions and other ERISA benefits, for 60 days, that

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would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period", or alternatively, for a determination that "the first \$12,475 of the "WARN Act claims of Plaintiff and each of the similarly situated former employees were entitled to priority status under 11 U.S.C. § 507(a)(4) and (5)", with the remainder allowed as a general unsecured claim. [Adversary Complaint, Adv. Dkt. 1].

On August 24, 2015, the Debtor filed its Answer to Class Action Adversary Proceeding Complaint [Violation of Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101– 2019 and California Labor Code §§ 1400 et seq.] [Adv. Dkt. 12], admitting that the Class Representative and certain other employees were discharged on or about June 19, 2015 without any WARN Act notifications, but otherwise generally denying the allegations of the Adversary Complaint and asserting affirmative defenses based upon certain exceptions (liquidating fiduciary, unforeseen business circumstances, and faltering company) to the provisions of the WARN statutes.

On December 18, 2015, the Class Representative filed her Motion for Class Certification and Related Relief [Adv. Dkt. 19]. The Debtor opposed class certification, filing its Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Class Certification and Related Relief [Adv. Dkt. 25], with the Class Representative thereafter filing her Reply in Support of Motion for Class Certification and Related Relief [Adv. Dkt. 27]. At a hearing held on February 25, 2016, the court granted the Motion for Class Certification, with an order as to same entered on March 14, 2016 (the "Class Certification Order") [Adv. Dkt. 34]. The Class Certification Order appoints the Class Representative and appoints the firm of Outten & Golden LLP as Class Counsel. The Class Certification Order further (a) approved a proposed form of notice to the Class, (b) instructed the Debtor to provide Class Counsel with

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the names and addresses of Class members, (c) directed Class Counsel to serve the approved form of notice on the Class and thereafter file a sworn statement affirming compliance with such directive, (d) established the deadline for any Class member to opt-out of the Class and directed Class Counsel to thereafter file a sworn statement listing the names of any persons who have opted out of the Class, and (e) found that the notice requirements established were the "best notice practicable under the circumstances and constitute[d] due and sufficient notice to all class members in full compliance with the notice requirements of Fed. R. Civ. P. 23."

On March 30, 2016, the Conversion Order was entered and on April 27, 2016 the Class Representative served her first round of formal discovery on the Trustee. Thereafter the Parties entered into a series of stipulations to modify adversary case scheduling orders regarding discovery deadlines and related pleadings. The Parties have reportedly been engaged in good faith, arms-length settlement discussions since 2018, including the informal exchange of damage calculations and relevant documents and information.

On or about January 1, 2020, two of the attorneys at Class Counsel formed a new firm, Raisner Roupinian LLP, and, with the consent of Class Counsel and the Class Representative, the representation of the Class Representative and the Class was transferred to the new firm. As such, when the term Class Counsel is used hereinafter and in the Proposed Settlement Agreement, the reference is to the Raisner Roupinian firm.

B. Current Status of the Estate.

As of this date, the assets of the Estate consist of, among other things, cash in the approximate amount of \$7,328,865.01. Of this amount, \$700,000

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has been earmarked for the benefit of specific classes of creditors per orders of the court entered pre-conversion. As set forth in the Declaration of Chapter 7 Trustee, Karen Sue Naylor, in Support of Interim Fee Applications, General Case Status [Dkt. No. 2791], filed with the Court on June 9, 2020:

"As of the date hereof, multiple adversary proceedings remain pending. One, referred to in the R&S Application as the "Warn Act Adversary", involves the claims of the Debtor's former employees for alleged post-petition violations of the Federal and California WARN Act statutes, and seeks multiple seven-figures in damages. With the assistance of my special litigation counsel in that matter, settlement discussions are progressing, and I hope to have this matter, which will result in a Chapter 11 administrative claim against the Estate, resolved this year. Until this adversary is resolved and the Chapter 11 administrative claim determined/allowed, Trustee is unable to create a claims waterfall analysis demonstrating likely distributions to Chapter 11 administrative creditors or seek an order of the Court authorizing interim distributions to Chapter 11 administrative creditors."

Four preference recovery adversary proceedings are pending against officers of the Debtor who took withdrawals from the Debtor's Deferred Compensation Plan. By these adversary proceedings, Trustee is seeking to recover approximately \$1,200,000. As set forth in the R&S Application, these adversary proceedings are being vigorously defended by the defendants, with the Debtor's D&O carrier reimbursing the defendants their costs of defense. Don Fife is Trustee's expert witness in these adversary proceedings. His expert report was transmitted to the defendants on June 5, 2020, a discovery cut-off date of August 28, 2020 is pending, and the matters are scheduled for pre-trial conference on October 29, 2020.

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Lastly, an adversary action was commenced against Gladstone seeking to recover damages for his alleged negligence in failing to direct the Debtor to abide by the Federal and California WARN Act statutes when he ordered postpetition layoffs. This alleged failure resulted in the commencement of the WARN Act Adversary referenced above. The adversary against Mr. Gladstone is presently being held in abeyance until the WARN Act Adversary is resolved, as such resolution will establish the Estate's alleged damages.

This Motion relates to the "WARN Act Adversary" and, if approved by the Court, will fix the Estate's damages against Gladstone, the Debtor's former president, and his alleged negligence in failing to direct the Debtor to abide by the Federal and California WARN Act statutes when he ordered post-petition layoffs, as asserted in *Naylor v. Scott Gladstone, et al.*, 8:17-ap-01105 TA.

2. The Settlement Agreement

As described by Trustee, the salient terms of the proposed Settlement Agreement are as follows:

(1) The Class, as defined in the order granting class certification that was entered on March 14, 2016, is comprised of: the Class Representative and all other similarly situated former employees who worked at or reported to the facility located at 3550 Hyland Avenue, Costa Mesa, California who were terminated without cause on or about June 19, 2015, within 30 days of June 19, 2015, or in anticipation of, or as the foreseeable consequence of, the mass layoff or plant closing ordered by Defendants on or about June 19, 2015, who are affected employees, within the meaning of 29 U.S.C. §

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2101(a)(5), and who have not filed a timely request to opt-out of the class. The members of the Class (the "Class Members") are listed on Exhibit A to the Proposed Settlement Agreement;

(2) The Class shall be allowed a Chapter 11 administrative claim, pursuant to 11 U.S.C. § 503(b)(1)(A) (the "Settlement Class Claim"), in the amount of \$1,200,000.00 (the "Proposed Settlement Payment");

(3) The Trustee makes no representations or warranties regarding the ultimate distribution to be received by the Class on account of the Settlement Class Claim and/or the Settlement Payment through the Trustee Final Report ("TFR") process, however the Trustee may seek Court approval to make an interim distribution to all holders of allowed Chapter 11 administrative claims following final court approval of the Proposed Settlement;

(4) The Proposed Settlement Payment shall be used to satisfy any and all obligations of the Estate to the Class, including but not limited to the obligation to pay the Class Representative Service Payment, Class Counsel's Fees, Class Counsel's Expenses, Settlement Administration Costs, and all payroll taxes including the Debtor's or the Estate's portion of the payroll taxes, as defined in Paragraph 6(a) of the Proposed Settlement Agreement;

(5) In exchange for the allowance of the Settlement Class Claim, and any distributions from the Estate on account of such allowed claim, the Class Representative and Class Members shall fully and completely release the Trustee, the Estate and the Debtor for any and all claims arising out of the alleged WARN Act and CAL-WARN Act violations as alleged in the Adversary

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Proceeding, including waivers of known and unknown claims pursuant to California Civil Code Section 15425;

(6) The Proposed Settlement Agreement establishes the specific obligations of Class Counsel and the Settlement Administrator in administering the Proposed Settlement Payment, and the mechanism for seeking court approval of the Proposed Settlement, including notices to the Class, objections to the settlement procedures by Class Members, and the treatment of any residual Proposed Settlement Payment funds. In particular, Class Counsel shall be responsible for the production and mailing of all notices required to be provided to the Class Members ("Class Notices"). The address of Class Counsel will be used as the return address for the Class Notices and Class Counsel will respond to all inquiries of the Class arising from or related to the Proposed Settlement. Subject to the Trustee's review and approval, Class Counsel shall be responsible for calculating the allocation of each Class Member's net share of the Proposed Settlement Payment. In addition, certain Class Members have filed formal proofs of claim ("POCs") against the Estate, some of which include claims for WARN Act violations. The Trustee will provide Class Counsel with all such POCs. Class Counsel will review such POCs and provide the Trustee with a schedule setting forth the portion of each claim appropriately attributable to the Allowed Class Claim. With the information provided by Class Counsel, the Trustee will file, as appropriate, objections to such POCs to reduce the claims by the amounts identified by Class Counsel. Class Counsel and the affected Class Members agree not to oppose the reduction of their respective POCs consistent with the information provided by Class Counsel. The Trustee is not precluded from including in any such objections additional objections to other aspects of the POCs not related to the WARN Act violation claims compromised by the terms of the Proposed Settlement Agreement;

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(7) Allocation of the Settlement Payment and Disbursement of the Net Settlement Amount to Class Members. The "Net Settlement Fund" is the Proposed Settlement Payment less the Class Representative Service Payment, Class Counsel's Fees, Class Counsel's Expenses, Settlement Administration Costs, and the Debtor's or the Estate's share of payroll taxes. "Settlement Administration Costs" means the fees and expenses reasonably and necessarily incurred by the Settlement Administrator as a result of administering the Proposed Settlement, as approved by the Court, including but not limited to: all costs and fees associated with preparing, issuing, and mailing any and all notices and other correspondence to Class Members; all costs and fees associated with mailing the Class Members' pro rata shares and all other payments required by the Proposed Settlement; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering the Proposed Settlement; and any other costs and fees incurred or charged by the Settlement Administrator in connection with the execution of its duties under the Proposed Settlement, including without limitation printing, distributing, and tracking documents for the Proposed Settlement, tax reporting, submitting payroll taxes on behalf of the Debtor or the Estate from the Settlement Payment, and providing necessary reports and declarations at the Parties' request. Class Counsel has retained the services of American Legal Claim Services, LLC as the Settlement Administrator, and the Trustee, on behalf of the Estate, agrees not to oppose Settlement Administration Costs not to exceed \$7,000;

(8) Class Counsel's Fees and Class Counsel's Expenses. The Trustee, on behalf of the Estate, agrees not to oppose an application or motion by Raisner Roupinian LLP for an award of their attorneys' fees ("Class Counsel's Fees") in the amount of up to one-third (1/3) of the Settlement Payment, net of (a) litigation expenses (including costs associated with the production and mailing of the notice of settlement and the cost of the settlement administrator) not to exceed \$10,000 ("Class Counsel's Expenses"), and (b)

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the Class Representative Service Payment (defined below). Class Counsel's Fees and Class Counsel's Expenses will be paid to Class Counsel (according to instructions to be supplied by Class Counsel) contemporaneously with the distribution of proceeds from the Settlement Class Claim to Class Members and shall be payment in full for Class Counsel's work and expenses in connection with the Adversary Proceeding or the Allowed Class Claim. For the avoidance of doubt, the Parties agree that Class Counsel's Fees and Class Counsel's Expenses shall be payable solely from the Proposed Settlement Payment and from no other source;

(9) Service Payments to the Class Representative. The Trustee, on behalf of the Estate, agrees not to oppose a one-time payment of Ten Thousand Dollars (\$10,000) to Class Representative Linda Martz-Gomez as compensation for her service in this matter and in exchange for a general release of all known and unknown claims ("Class Representative Service Payment"). The Settlement Administrator shall distribute this payment to the Class Representative in addition to her pro rata share of the Net Settlement Payment, and Class Counsel's Fees shall not be deducted from the Class Representative Service Payment. For the avoidance of doubt, the Parties agree that the Class Representative Service Payment shall be payable solely from the Proposed Settlement Payment and from no other source. The Class Representative Service Payment shall be characterized as non-employee compensation to the Class Representative and shall be reported to any applicable taxing authorities on behalf of the Class Representative on a Form 1099 issued to the Class Representative with her taxpayer identification number;

(10) Disbursement of Settlement Fund Payments. Class Counsel, through the services of the Settlement Administrator, shall be responsible for the preparation and mailing of the individual settlement checks to Class

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Members, withholding and paying all applicable taxes (both Class Member and on behalf of the Debtor and/or the Estate), remitting Class Counsel's Fees and Expenses, preparing all tax forms required in connection with the Proposed Settlement in accordance herewith and with any other orders of the Court, and shall bear the expense for the preparation and mailing of such settlement checks and tax forms. Payroll withholding shall include all applicable federal and local income taxes, and statutory taxes including, without limitation, Federal Insurance Contribution Act ("FICA") and federal and state unemployment insurance ("UI") amounts associated with the distributions to Class Members receiving payments under the Proposed Settlement Agreement (collectively, "Payroll Taxes"). The Settlement Administrator shall determine the amount of any Payroll Taxes that will become due and owing and shall withhold such amounts. All such Payroll Taxes shall be paid promptly to the appropriate taxing authorities. The Settlement Administrator shall determine the employer's share of all FICA and UI amounts which shall be deducted from the Proposed Settlement Payment and shall pay the employees' share of such taxes by deducting such amounts from the Class Members' pro rata shares of the Proposed Settlement Payment. The Settlement Administrator shall be responsible for fulfilling reporting requirements, including federal and state payroll tax returns, the issuance of Forms W-2 and other required federal and state tax forms, and related matters. For the purpose of calculating applicable taxes, the Parties agree that eighty percent (80%) of the amounts actually paid to the Class Members after deducting Class Counsel's Fees and Expenses, including the cost of the Settlement Administrator, and the Class Representative's Service Payment, but before deducting employee taxes, shall constitute wages reportable on Internal Revenue Service Form W-2, and twenty percent (20%) shall constitute health insurance payment amounts not subject to backup withholding or employment taxes to the extent consistent with Internal Revenue Code Regulations;

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(11) The Trustee agrees to file a motion under Fed. R. Bankr. P. 9019 and 7023 for approval of the Proposed Settlement through a bifurcated hearing process, whereby an initial hearing will be held at which time the Parties shall seek entry of an order of the Court preliminarily approving the Proposed Settlement and approving the form and manner of notice to the Class Members of the Proposed Settlement, including, among other things, their right to object to the Proposed Settlement in person or to appear by counsel. The Parties shall also request a date for a fairness hearing ("Fairness Hearing"). At the Fairness Hearing, the Parties shall request that the Bankruptcy Court shall consider final approval of the Proposed Settlement. The Proposed Settlement is subject to entry of a final order by the court, after notice and hearing to creditors and parties in interest, in accordance with applicable law and local rules (the "Settlement Order"). The Settlement Order shall be deemed final when fourteen (14) days have elapsed from the entry of the Settlement Order, with no notice of appeal filed, or after the Settlement Order is finally affirmed on appeal, whichever first occurs; and,

(12) Upon entry of a final non-appeal order approving the Proposed Settlement, the Adversary Proceeding shall be dismissed, with prejudice, by stipulation of the Parties. Attached hereto as Exhibit "2" is the proposed form of notice to Class Members of the Proposed Settlement, the Fairness Hearing, and their right to object to the Proposed Settlement (the "Notice"). The Parties submit that the Notice comports with the requirements of FRBP 7023(e) and provides fair and reasonable notice to the Class Members of the Proposed Settlement and the right of any Class Members to request exclusion from the Class pursuant to section (e)(5).

3. The A&C Properties Factors

A bankruptcy court may approve a compromise or settlement on

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motion by the trustee after notice and a hearing. Fed. R. Bankr. P. 9019(a). A bankruptcy court should affirm a compromise agreement if it was negotiated in good faith and it is fair and equitable. *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). In determining the fairness, reasonableness, and adequacy of a proposed settlement agreement, the court must consider:

1. The probability of success in the litigation;
2. The difficulties, if any, to be encountered in the matter of collection;
3. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Id.*

The court does not need to conduct an exhaustive investigation into the validity of the asserted claim. *U.S. v. Alaska Nat'l Bank of the North (Matter of Walsh Const., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). It is sufficient that the court determines that the claim has a substantial foundation and is not clearly invalid as a matter of law, or that the outcome of the claim's litigation is doubtful. *Id.* The court must determine whether the compromise is in the best interest of the bankruptcy estate. *A & C Properties*, 784 F.2d at 1382. These factors are separately analyzed below:

a. Probability of Success in Litigation

Trustee argues that it is unclear whether the Class Representative will ultimately succeed in establishing the claims of the Class against the Estate. While the Trustee, based upon the advice of her special litigation counsel, believes that the Estate may have defenses to the claims asserted under the WARN Act, it is less clear that such defenses will be effective against the claims asserted under the CAL-WARN Act. Trustee contends that the

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terminations were caused by a sudden and dramatic event outside of Debtor's control and that, at the time WARN notice was due, it was actively seeking capital or financing that would have allowed it to avoid the terminations. (Adv. Dkt. 12 at 11). Plaintiff contends that the terminations were foreseeable more than 60 days prior to June 19, 2015, and that the events that led to the terminations were not only foreseeable, but inevitable. Plaintiff also contends that the unforeseeable business circumstances exception does not apply under the CAL-WARN Act, that the Trustee is foreclosed from asserting the faltering company exception under the CAL-WARN Act because no determination from the Department of Industrial Relations (DIR) was requested at the time of the layoffs, and that none of the federal WARN Act statutory exceptions are applicable because, among other things, no written notice was provided to the Class Members.

Gladstone argues that Trustee has a high likelihood of success defending against the Plaintiff's federal WARN Act claims but only possibly (not necessarily likely) a lower likelihood of success in defending against Plaintiff's CAL-WARN Act claims. Gladstone argues that at the very least, a Settlement Payment of \$1.2 million is unjustifiably high. Gladstone argues that the Trustee obtained no or little discount on the WARN Act claims even though the Trustee is settling at a very early stage of the lawsuit, without requiring the WARN Act Plaintiffs to conduct any discovery and without causing the Plaintiff's and their counsel to incur any cost or fees in prosecution of their claims. Furthermore, Gladstone argues that there is nothing complicated about the WARN Act claims alleged by Plaintiffs or the Estate's defenses thereto. According to Gladstone, certain of the Estate's defenses, such as the "faltering company" exception raise issues of law that can easily be adjudicated through a pre-trial and dispositive motion, thus potentially avoiding the need to conduct lengthy or costly discovery.

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Plaintiff argues that the settlement figure is not unreasonable and Class Counsel initially calculated the Class' maximum WARN damages of 60 days' wages and benefits at \$1.9 million for the smaller class of 111 class members, exclusive of reimbursable medical expenses compensable under California Labor Code 1402(a)(2), the employer's payroll obligations, the cost of providing notice to the class, and the cost of administering the settlement. The proposed settlement amount, allegedly, represents an approximately 60% recovery of the fuller Class' maximum WARN damages again, exclusive of reimbursable medical expenses compensable under California Labor Code 1402(a)(2), the employer's payroll obligations, the cost of providing notice to the class, and the cost of administering the settlement. Plaintiff asserts that should the proposed settlement not be approved, and the Class were to prevail on the merits, Class Counsel would seek its attorneys' fees, pursuant to 29 U.S.C. § 2104(a)(6). Under those circumstances, Class Counsel estimates the exposure to the estate could easily exceed \$3 million. (Roupinian Decl., ¶ 19).

There seems to be general agreement that Trustee's likelihood of successfully defending against the federal WARN Act claims is higher than on the CAL-WARN Act claims. But even a high likelihood of success does not equate to certainty, whereas a settlement does. To that end, Trustee points out that the "faltering company" defense may not find purchase here because, she argues, under 29 U.S.C. sec. 2102(b)(1) and Cal. Lab. Code sec. 1402.5(d), the exception applies to single site plant closures, not mass layoffs as occurred in this case. In any event, litigation, regardless of how strong a defense may seem, is likely to be expensive and laborious. Also, Plaintiff points out, if the settlement is not approved, the estate is potentially exposed to more than twice the amount of the settlement. Trustee notes that, Gladstone aside, no other interested party, creditor or otherwise, has opposed this settlement. Trustee posits that Gladstone's true motive in opposing this motion is that he seeks to avoid or at least limit the Estate's

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claims against him for his alleged negligence as CEO and Chairman of the Board of the Debtor in failing to ensure that the applicable WARN statute(s) was/were complied with when he ordered the June 2015 post-petition mass layoff of the Debtor's employees. Furthermore, Gladstone's assertion that the issues are not complicated itself seems overly simplistic as it is unknown what evidence might be discovered and how the potential litigation would shake out, especially given the partial description of Plaintiff's litigation strategy.

b. Difficulty in Collection

By mutual agreement this factor does not apply.

c. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it

As noted above, Gladstone asserts that the litigation ought to be straightforward and the issues are not complex. In fact, Gladstone asserts that many of the issues raised can be dispensed with through dispositive and pre-trial motions. Unsurprisingly, Plaintiff and Trustee assume the opposite position. For example, Plaintiff asserts that the allegations and the Debtor's defenses to the claims under the WARN Acts are fact intensive and require discovery. Discovery regarding the Debtor's financial affairs leading up to the terminations would also be fact intensive and lengthy, significantly reducing the funds ultimately available for creditors. Plaintiff also points out that it is likely that, regardless of the outcome of a trial, there would be an appeal, resulting in further lengthy delays. Trustee also points to her own diligence in retaining special counsel to litigate the WARN Act claims, whose efforts of over more than year enabled targeted and productive settlement discussions, which result in the proposed Settlement Agreement. Trustee has also taken steps to liquidate certain estate assets, which resulted in greater recoveries

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for Chapter 11 administrative claims, which claims total in excess of \$5,400,000 before consideration of the Proposed Settlement. Thus, Trustee argues, her diligence in this matter undercut the suggestion that she is merely feigning concern over delays in the WARN Act litigation. Trustee and Plaintiff have persuasively argued that the issues involved could potentially become quite complex given the fact intensive nature of the allegations. This factor tilts in favor of granting the motion. But the biggest issue the court sees is part of this *A&C Properties* factor, *i.e.* ongoing expense from diminishing resources. The court will call it the "melting ice cube" factor. Consider the Trustee's report on the estate's current financial condition:

"At present I hold cash in the approximate amount of \$7,328,572.67. Of that amount, \$700,000 has been earmarked for the benefit of specific classes of creditors as per orders of the Court entered pre-conversion. At present, allowed and unpaid Chapter 11 administrative claims (Section 503(b)(9) claims, landlords, miscellaneous chapter 11 unpaid vendor claims and the claims of employed professionals) are approximately \$5,400,000, before the Proposed Settlement, with additional claims requiring my review. The total likely distribution to allowed Chapter 11 administrative claims cannot be finally determined until after final administration and allowance of final Chapter 7 costs fees and costs. As such it remains uncertain whether Chapter 11 administrative claims will be paid in full, with or without the Proposed Settlement." Trustee's Reply, p. 25.

Do the arithmetic. The Trustee is reporting that the estate is already teetering on administrative insolvency assuming only a \$1.2 million recovery for the class. Depending on how the remaining litigation pans out, it is altogether likely that even administrative claims will not be paid in full in this case. So, the ancient proverb comes to mind: "If you find yourself in a hole...stop digging."

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**Anna's Linens, Inc.
d. Best Interest of Creditors**

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Trustee argues that absent settlement, the Parties anticipate another year or perhaps two of expensive litigation, including formal discovery, before the Class Claim will be brought to trial. Of particular importance, Trustee argues, the Proposed Settlement provides for the complete administration, calculation, and payment of the Class Claims, including withholding and funding of payroll taxes, both of Class members and of the Estate, thereby eliminating the substantial administrative costs the Estate would incur in performing these services.

Gladstone argues that the proposed Settlement Agreement is not in the best interests of the estate's creditors because it proposes to treat the class members as entitled to administrative claims. Gladstone points out, citing *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 979 (2017), that the Bankruptcy Code sets forth a basic system of priority, which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate. Gladstone also asserts that at least one post-*Jevic* court has recognized that "[i]n light of the Supreme Court's recent ruling in *Jevic*, parties who seek approval of settlements that provide for a distribution in a manner contrary to the Code's priority scheme should be prepared to prove that the settlement is not only 'fair and equitable' ... but also that any deviation from the priority scheme for a portion of the assets is justified because it serves a significant Code-related objective." *In re Fryar*, 570 B.R. 602, 610 (Bankr. E.D. Tenn. 2017).

Here, Gladstone argues, it is possible that class members would only be entitled to fourth or fifth priority as wage claims with the balance of the claims that is not entitled to priority under Sections 507(a)(4)-(5) treated as a bifurcated unsecured claim. 11 U.S. Code § 507(a)(4)-(5); see *In re First*

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Magnus Fin. Corp., 403 B.R. 659, 666 (D. Ariz. 2009) (holding that WARN Act damages should not be awarded administrative priority status because they "are not necessary to maintain the debtor as a going concern, nor are they necessary to preserve the bankruptcy estate during the liquidation process.") Both Trustee and Gladstone acknowledge that there is persuasive authority suggesting that post-petition WARN Act claims can be entitled to administrative priority, but there does not appear to be controlling authority in the Ninth Circuit. Plaintiff also points out that settling the case now obviates the need for expenditure of time and money in litigation, which works to the benefit of all creditors.

As there does not appear to be controlling authority in this circuit on the issue of priority for these class members it is difficult to assess this issue with precision. But as noted, there is at least a line of authority that suggests administrative claim priority status for post-petition WARN Act plaintiffs is the correct posture. See *In re Powermate Holding Corporation*, 394 B.R. 765, 776-77 (Bankr. D. Del. 2008) (construing WARN claims as severance pay, the court determined that the WARN claims "vest" at the time of the employees' termination, thereby making them entitled to administrative expense claims in a post-petition termination.) Furthermore, Trustee argues that all courts addressing the issue conclude that employee terminations which occur after the commencement of the case would satisfy section 503(b)(1)(A)(ii). See *In re First Magnus Fin. Corp.*, 390 B.R. 667, 679 (Bankr. D. Ariz. 2008), *aff'd*, 403 B.R. 659 (D. Ariz. 2009); *In re Powermate Holding Corp.*, 394 B.R. 765 (Bankr. D. Del. 2008); *In re Philadelphia Newspapers, LLC*, 433 B.R. 164, 173-74 (Bankr. E.D. Pa. 2010). Trustee's persuasive authority is likely sufficient for purposes of this motion. The issue is unquestionably a gamble. Gladstone's argument to keep plowing ahead in the hope this is resolved in favor of the estate sounds like an encouragement to continue doubling down on a shaky bet in the hopes of winning, which is

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considerably easier to argue if one is using other people's money.

Finally, although Gladstone asserts his own status as a creditor, it likely bears repeating that no other creditor or interested party opposed the motion or joined Gladstone's opposition to the proposed Settlement Agreement, and Gladstone's self interest in keeping the settlement low or non-existent cannot be ignored. Thus, although Gladstone may not be pleased with the Settlement Agreement for any number of reasons, his dissatisfaction alone does not mean that the Settlement Agreement is not in the best interests of the estate's creditors taken as whole.

4. Compliance with FRBP 7023

FRBP 7023 (e) provides, in pertinent part:

(e) The Claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

- (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
- (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
- (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
- (4) If the class action was previously certified under rule 23(b)(3), the court

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may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

Here, Trustee asserts that the Proposed Settlement satisfies the above requirements in that:

(1) The Parties are requesting that the court approve the proposed form of Notice, which is fair and reasonable, providing a comprehensive description of the Proposed Settlement and the options of each Class Member in considering same;

(2) The Parties are requesting that the court preliminarily or conditionally approve the Proposed Settlement, thereafter, requiring a Fairness Hearing so that it may determine that the Proposed Settlement is in fact fair, reasonable and adequate;

(3) The full, complete and fully executed Proposed Settlement Agreement is attached to this Motion for the review and consideration by each Class Member, and the Motion provides an overview of the material terms of the Proposed Settlement;

(4) The Court has previously certified the Class and Class Members were afforded an opportunity to request exclusion, with three such individuals doing so; and,

(5) The Proposed Settlement requires court approval, and proposed Notice describes for each Class Member the right to object and the deadline for filing

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any such objections.

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It appears the Rule 23 as adopted into FRBP 7023 is or will be complied with under the Settlement.

5. Conclusion

Trustee and Plaintiff have persuasively argued that the *A&C Properties* factors favor granting the motion over Gladstone's opposition, as the Settlement Agreement appears to have been the result of arm's-length negotiations, is fair and equitable, is carefully considered and serves the best interests of the creditors. As a practical matter, the Trustee is doing what the court expects her to do, that is, keeping a close eye on the relative benefit of continued litigation considering the lack of available resources. This is particularly so in a borderline administratively insolvent case which this one appears likely to be. The proposed Settlement Agreement also appears to comply with the requirements of FRBP 7023, and for all these reasons should be approved.

Approve

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

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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

Richard C Donahoo

Andrew Still

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#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Tentative Ruling:

- NONE LISTED -

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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))
(cont'd from 10-01-20)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:

The court will (or recently has) issued an OSC re dismissal for lack of prosecution.

Tentative for 10/1/20:

See #7

Tentative for 3/26/20:

Status?

Tentative for 3/12/20:

So what is status? At earlier conferences there was discussion about a Rule 56 motion, but nothing appears to be on file. Continue to coincide with pre-trial conference on March 26, 2020 at 10:00AM.

Tentative for 6/6/19:

While waiting for a Rule 56 motion a dispute has arisen re: real party in

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interest.

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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

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

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CONT... Cheri Fu

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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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8:15-13008 Anna's Linens, Inc.

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Adv#: 8:17-01105 Naylor v. Gladstone

**#2.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence
(con't from 8-06-20 per order approving stip. to cont s/c entered 7-15-20)
(rescheduled from 11-12-2020 per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-11-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND ESTABLISHING CERTAIN DEADLINES
ENTERED 11-10-20**

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

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Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

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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: 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
(rescheduled from 11-12-20 per court)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to March 11, 2021 @ 10:00 a.m.

Tentative for 10/8/20:
Status on answers/defaults?

Tentative for 7/23/20:
Status?

Tentative for 3/5/20:
What is status of answer/default?

Tentative for 11/7/19:
Why no status report?

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CONT... Zia Shlaimoun

Chapter 7

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

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

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Zia Shlaimoun

Sunjina Kaur Anand Ahuja

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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 (con't from 9-03-20 per order on application for cont. of initial s/c entered 9-02-20)(rescheduled from 11-12-20 per court)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER ON AMENDED STIPULATION RE: INITIAL STATUS CONFERENCE**

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
Kathleen J McCarthy
Brendan Loper

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

**#5.00 STATUS CONFERENCE RE: Complaint for: 1) Avoidance of Unauthorized Post-Petition Transfer (11 USC Section 549); 2) Recovery of Avoided Transfers (11 USC Section 550); 3) Turnover of Property of the Estate; 4) Quiet Title to Real Property and 5) Injunctive Relief
(cont'd from 9-10-20 per order to cont. s/c entered 9-02-20
(rescheduled from 11-12/2020 per court)**

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Status conference continued to: June 24, 2021 @ 10:00 a.m.
Deadline for completing discovery: June 1, 2021
Last date for filing pre-trial motions: June 11, 2021
Pre-trial conference on:
Joint pre-trial order due per local rules.

Tentative for 6/3/20:
See #8 and 9 @11:00 a.m.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Hamid Rowshan

Pro Se

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

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, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

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 10, 2020

Hearing Room 5B

10:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

#6.00 STATUS CONFERENCE RE: Complaint For: I. Turnover 11 U.S.C. Sec. 542 & 543; II. Avoidance 11 U.S.C. Sec. 544; III. Avoidance 11 U.S.C. Sec. 548; IV. Liability 11 U.S.C. Sec. 550; V. Avoidance 11 U.S.C. Sec. 549; VI. Sale Of Property 11 U.S.C. Sec 363(h); VII. Avoidance 11 U.S.C. Sec. 547
(con't from 9-03-20) (rescheduled from 11-12-2020 per court)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to February 25, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 9/3/20:
It appears that the case is not yet at issue with response of certain parties still awaited. Continue to Nov. 12 @ 10:00 a.m. Plaintiff to give notice to all parties who have or will respond.

Tentative for 6/25/20:
Continue approximately 60 days to allow service to be effected.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

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Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Jee Hyuk Shin

Chapter 7

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jee Hyuk Shin	Pro Se
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Defendant(s):

Jee Hyuk Shin	Pro Se
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GODDO SAVE	Pro Se
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Jae Shin	Pro Se
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Bang Shin	Pro Se
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Insook Shin	Pro Se
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Jeemin Shin	Pro Se
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Mini Million Corporation	Pro Se
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Theodore Ebel	Pro Se
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Mojerim, Inc.	Pro Se
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Seafresh Restaurant	Pro Se
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Plaintiff(s):

Richard A Marshack	Represented By Anerio V Altman
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Trustee(s):

Richard A Marshack (TR)	Represented By Anerio V Altman
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 10, 2020

Hearing Room

5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

**#7.00 STATUS CONFERENCE RE: Adversary Complaint for Declaratory Relief
(con't from 9-03-20)**

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to April 22, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 9/3/20:
It would appear there are several preliminary questions concerning jurisdiction and proper venue. It makes sense to sort these out first before discovery commences and deadlines are imposed. Consequently, the status conference will be continued to December 10, 2020 @ 2020. In meantime, the parties are ordered to file such motions as are necessary and appropriate to resolve the questions about proper venue and /or withdrawal of reference. By the continued status conference the court expects those issues to be resolved.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Pro Se

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Andrew Corcoran	Pro Se
Shannon Kreshtool	Pro Se
Ditech Financial, LLC	Pro Se
SELECT PORTFOLIO	Pro Se
BP Peterman Legal Group, LLC	Pro Se

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:20-11327 Heather Huong Ngoc Luu

Chapter 7

Adv#: 8:20-01117 E-Z Housing Group LLC v. Luu

#8.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt and Judgment for Fraud, Actual Fraud, False Pretenses, False Representation and Actual Fraud 11 USC Section 523(a)(2)(A) and Willful and Malicious Injury 11 USC Section 523(a)(6)
(cont'd from 10-29-20 per order approving mtn to cont. s/c entered 10-28-20)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to January 28, 2021 @ 10:00 a.m. to allow processing of default judgment.

Party Information

Debtor(s):

Heather Huong Ngoc Luu

Represented By
Joshua R Engle

Defendant(s):

Heather Huong Ngoc Luu

Pro Se

Plaintiff(s):

E-Z Housing Group LLC

Represented By
Fritz J Firman

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, December 10, 2020

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

#9.00 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 10-01-20)

Docket 0

Tentative Ruling:

Tentative for 12/10/20:
OSC is set for January 7, 2021, why case should not be dismissed for lack of prosecution.

Tentative for 10/1/20:
Why no status report?

Tentative for 3/26/20:
Status?

Tentative for 11/14/19:
See #5

Tentative for 10/3/19:
Should a trial be set in view of Mr. Albert's withdrawal?

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10:00 AM

CONT... Cheri Fu

Chapter 7

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.

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

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, December 10, 2020

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #10.00** 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 3-12-20)
(con't from 11-05-20 per stip. to cont. pre-trial conference entered 8-28-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-11-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL
CONFERENCE ENTERED 12-08-20**

Tentative Ruling:

Tentative for 3/12/20:

First, why the very late status report? Filing less than 2 days before the status conference not only violates the LBRs, it is an affront and imposition upon the court. Be prepared to discuss the suitable amount of sanctions.

Status conference continued to July 2, 2020 at 10:00AM.

Deadline for completing discovery: May 30, 2020

Last date for filing pre-trial motions: June 22, 2020

Pre-trial conference on:

Joint pre-trial order due per local rules.

Tentative for 2/27/20:

Is this resolved? Dismiss?

Tentative for 1/9/20:

See #3

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Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Catherine M Haretakis

Chapter 11

Tentative for 12/19/19:
See #2.1

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.

Party Information

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
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Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:12-17406 Matthew Charles Crowley

Chapter 7

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

#11.00 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8) (cont'd from 10-08-20 per order on stip. to continue pre-trial conf. entered 9-22-20) (rescheduled from 11-12-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - JUDGMENT
PURSUANT TO STIPULATION FOR ENTRY OF JUDGMENT ENTERED
11-17-20**

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
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Judge Theodor Albert, Presiding
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Thursday, December 10, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

**#12.00 Andrew R. Corcoran's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 11-12-20 per court's mtn)**

Docket 38

Tentative Ruling:

Tentative for 12/10/20:

This is a Motion to Dismiss this adversary proceeding based on lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), or in the alternative, to stay or transfer this adversary proceeding, of defendant Andrew Corcoran joined by Defendant Matthew Browndorf (collectively "Defendants"). The motion is opposed by plaintiff, Peleus Insurance Company ("Plaintiff").

**1. Defendants' Alternative Remedy of Staying This Adversary
Proceeding Is Warranted**

The parties report that there is a matter currently pending in Maryland District Court that involves the substantially the same parties and subject matter. Furthermore, that matter was initiated several months prior to this adversary proceeding. Plaintiff believes that this court is the proper venue as it argues that this court can exercise personal jurisdiction over all necessary parties. Plaintiff also reports that there is a motion to dismiss in the Maryland matter based on an alleged failure to join a necessary party under Rule 12(b) (7). Plaintiff believes that motion to dismiss will succeed. Defendants believe the Maryland motion to dismiss will fail and assert that this court cannot properly exercise personal jurisdiction.

According to the status report filed on 12/3, Plaintiff reports that the Maryland motion to dismiss is expected to be fully briefed by 12/14 (just after the hearing on this motion). The hearing date for the Maryland motion to dismiss is unknown, but likely not too long after the completion of the briefing. Plaintiff has also filed a motion with the District Court of the Central District of

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11:00 AM

CONT... **BP Fisher Law Group, LLP**

Chapter 7

California to withdraw the reference. That motion is set for hearing before Judge Kronstadt on March 29, 2021.

There is a lot going on in this case to say the least. The motion and subsequent papers indicate that the threshold issue of personal jurisdiction is likely to be complex and hotly contested. There are also two pending motions that could have a major impact on this adversary proceeding, but the outcome of those motions is obviously uncertain at present. Matters will clarify one way or another soon. Thus, for reasons of judicial economy, comity, deterrence of potential forum shopping, and the need to avoid parallel litigation and/or inconsistent rulings, this court will grant a stay of proceedings as an alternative form of relief as suggested in the motion. This relief can likely be justified under the "First to File" doctrine, a discretionary rule in which the court must consider whether a complaint containing the same issues and parties has already been filed in another district. *Alltrade, Inc. v. Uniweld Prods.*, 946 F.2d 622, 625 (1991). This rule is not to be applied mechanically or too rigidly and the policy underlying the rule should not be disregarded lightly. *Id.* at 625, 627-28. In other words, the rule does not require perfect identity of issues and parties. See *Audio Entertainment Network, Inc. v. AT&T*, 1999 U.S. App. LEXIS 34500 at *3. "[I]t is not an abuse of discretion, and therefore not reversible error, for a district court judge to weigh the facts and conclude that the rule should apply." *Alltrade*, 946 F.2d at 628.

The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference in late March or early April. By that time, the District Court in Maryland will likely have also ruled on the 12(b)(7) motion and we will have a much clearer picture of what is and needs to be happening to move this matter forward, including potentially revisiting this motion.

Grant a temporary stay of proceedings pending the outcome of both the Maryland motion to dismiss and the motion to withdraw the reference. A continued status conference is scheduled April 8, 2021 at which time the court requires a full update and, if then appropriate consistent with other rulings, will establish deadlines.

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11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

Plaintiff(s):

Peelus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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CONT... BP Fisher Law Group, LLP

Chapter 7

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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

#13.00 Matthew C. Browndorf's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 11-12-20 per court's own mtn)

Docket 43

Tentative Ruling:

Tentative for 12/10/20:
See #12.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

**United States Bankruptcy Court
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11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, December 10, 2020

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2:00 PM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01002 Richard A Marshack in his capacity as Chapter 7 Tr v. Olga Shabanets, as

#14.00 Plaintiff's Notice of Motion and Motion for Summary Judgment Or, In the Alternative, Summary Adjudication of Issues

Docket 64

Tentative Ruling:

Tentative for 12/10/20:

Trustee, Richard Marshack ("Trustee") moves under FRCP 56 for summary judgment or in the alternative, summary adjudication against Defendants Olga Shabanets, as trustee of the 2012 Irrevocable Trust Agreement of Igor Shabanets u/a/d November 12, 2012, et al (collectively "Defendants"). The motion is not opposed by any named defendant, including debtor, Igor Shabanets ("Debtor"). The only opposition comes from a judgment creditor, Remares Global, LLC ("Remares").

1. Relief Requested

Summary judgment or adjudication is sought by Trustee on the following causes of action taken from the First Amended Complaint ("FAC"):

1. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(1) – Securities Transfers
2. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(1) – Cash

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CONT...

**Igor Shabanets
Transfers**

Chapter 7

3. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(2)(B) –
Securities Transfers

4. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(2)(B) –
Cash Transfers

5. Fraudulent Conveyance (Cal. Civ. Code §3439.05 – Securities
Transfers

6. Fraudulent Conveyance (Cal. Civ. Code §3439.05 – Cash
Transfers

In addition to summary judgment in his favor on the causes of
action directly above, Trustee also seeks the following relief:

- On all Claims for Relief, for a judgment recovering the
Transfers for the benefit of the Estate in the total amount of
\$4,145,380.03;
- On all Claims for Relief, for preservation of the Transfers in
the total amount of \$4,145,380.03 pursuant to 11 U.S.C. § 551;
- For entry of a monetary judgment in the amount of
\$4,145,380.00 against Defendants;
- For entry of an order authorizing the Court to disburse the
balance of funds deposited with the court attributable to the avoided
transfers to the Trustee as property of the Estate pursuant to 11 U.S.C. §
541(a)(4).

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CONT...

Igor Shabanets

Chapter 7

2. Facts

As recited by Trustee, the following facts are undisputed:

A. Pre-Bankruptcy

On October 8, 2012, Debtor executed a document entitled Revocable Trust Agreement of Igor Shabanets, with Debtor as the settlor of a series of trusts described in the revocable trust agreement and reserving the right to revoke the trust agreement at any time. Debtor and his wife, Olga Shabanets ("Olga") were designated as the co-trustees of the Revocable Trust. On November 12, 2012, Debtor executed a document creating a trust entitled the 2012 Irrevocable Trust Agreement of Igor Shabanets ("Irrevocable Trust"). Olga was designated as the trustee of the Irrevocable Trust. On September 28, 2016, Omeranio Investments filed a lawsuit in Florida State Court, initiating an action captioned *Remares Global LLC, as assignee of Omeranio Investments, Ltd. v. Vishmu & AI LLC, et al.*, case no. 50-2016-CA-011045 ("Florida Action"). On August 7, 2018, Debtor was joined into the Florida Action as Defendant.

On August 28, 2018, shortly after being named Defendant in the Florida Action, Debtor made or caused to be made multiple transfers of securities ("Securities"), with a value of \$3,385,713.12, from an account with Merrill Lynch in the name of the Revocable Trust, account number ending in -4643 ("Revocable Trust Account"), to another account with Merrill Lynch in the name of the Irrevocable Trust, account ending in -4561 ("Irrevocable Trust Account"). Also, on August 28, 2018, Debtor made or caused to be made a cash transfer in the amount of \$5,659.32 from the Revocable Trust Account to the Irrevocable Trust Account. On August 29, 2018, Debtor made or caused to be made a cash transfer in the amount of \$754,007.59 from the Revocable Trust Account

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CONT...

Igor Shabanets

Chapter 7

to the Irrevocable Trust Account. The August 28, 2018 and August 29, 2018 cash transfers together total \$759,666.91 (collectively, the "Cash Transfers"). On September 27, 2018, Debtor transferred by grant deed his interest in property located at 9875 Rimmele Drive, Beverly Hills, California, with an estimated value between \$1.5 million to \$2.5 million, for no consideration, to IOS Properties, LLC, a Nevada limited liability company wholly owned by the Irrevocable Trust. On April 22, 2019, a money judgment in the amount of \$10,314,112.97 was entered against Debtor in the Florida Action.

On April 23, 2019, Debtor made or caused to be made a cash transfer in the amount of \$399,185.00 from a personal bank account with Bank of America to the Irrevocable Trust Account. Collectively, all transfers to the Irrevocable Trust Account described above from August 28, 2018 through April 23, 2019 will be referred as the "Transfers." The Transfers total \$4,544,565.03. On May 2, 2019, Remares recorded a Judgment Lien Certificate with the Florida Secretary of State which Remares asserts caused a lien to be placed on all of Debtor's personal property, which Remares contends included or should include the securities and cash transfers. On May 3, 2019, Remares filed a sister-state judgment in California in Orange County Superior Court and judgment was entered in favor of Remares against Debtor for \$10,324,378.84.17. On May 7, 2019, Remares caused the Florida court to issue a Writ of Garnishment, served upon Merrill Lynch, which Remares asserts placed another lien on the Debtor's property, including the securities and cash transfers. On August 15, 2019, Remares caused the California Court to issue a writ of execution ("California Writ").

On August 26, 2019, the California Writ and a Notice of Levy were served on Merrill Lynch, and subsequently, on August 28, 2019, the same were served on Debtor. Remares asserts this placed a third lien on

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CONT...

Igor Shabanets

Chapter 7

the securities and cash transfers. On September 17, 2019, Remares caused Debtor to be served with a California Order to Appear for Examination ("ORAP"), which Remares asserts caused a fourth lien to be placed on the securities and cash transfers. On October 1, 2019, an abstract of judgment for \$4.5 million was entered against Debtor in favor of creditor Global Approach, Inc. ("Global"), in connection with case number 30-2019-01101713-CU-EN-CJC filed in the Superior Court of California, County of Orange. On October 30, 2019, Debtor transferred via grant deed his interest in real estate property located in Dana Point, CA, with an estimated value of \$6 million, to Rock Star Beverly Hills, LLC, a company of which Debtor is the principal.

B. The Bankruptcy and Adversary Proceedings

On August 22, 2019, Remares filed a complaint against Olga and Olga Shabanets as Trustee of 2012 Irrevocable Trust Agreement of Igor Shabanets, u/a/d November 12, 2012 ("Shabanets Trust"), Igor Shabanets, and Merrill Lynch, under California Code of Civil Procedure §§ 3439.04 and 3439.05 to avoid fraudulent conveyance, initiating case number 30-2019-01092348-CU-NP-CJC in the Superior Court for the County of Orange ("State Court Action"). On December 20, 2019, Remares filed the FAC in the State Court Action. On December 21, 2019, Debtor filed a voluntary petition for bankruptcy under Chapter 11 of Title 11 of the United States Code ("Petition Date").

Between January 6-7, 2020 Debtor filed his schedules and statements of financial affairs. Pursuant to Debtor's statements, Debtor claims only \$2,700 in assets, debt in excess of \$91 million, provides that Debtor was/is a party to ten (10) different lawsuits involving creditors within one (1) year of filing of the petition, asserts that the debts are

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primarily from judgment creditors regarding business loan guarantees, and asserts that any transfers into his family irrevocable trust were made "in the ordinary course of business" and therefore "not listed on the statement of financial affairs document." On January 7, 2020, Debtor filed amended schedules A/B and disclosing two accounts with Merrill Lynch, account numbers ending in -4643 and -4561.28 These accounts were previously defined as the Revocable Trust Account and Irrevocable Trust Account.

On January 9, 2020, Remares filed a notice of removal of the State Court Action ("Removal Action"), initiating this adversary proceeding. On January 21, 2020, as Adv. Dk. No. 10, Remares filed a motion to order Merrill Lynch to deposit certain funds in the Court's registry. On February 7, 2020, as Adv. Dk. No. 24, the Court entered an order instructing Merrill Lynch to deposit \$3,033,215.05 ("Funds") into the bankruptcy court register. The Funds consist of \$2,546,806.49 in securities and cash in the Irrevocable Trust Account and \$482,780.80 in funds Debtor had in 529 college savings accounts. On February 10, 2020, as Adv. Dk. No. 26, defendants, Olga and Olga Shabanets as Trustee of 2012 Irrevocable Trust Agreement of Igor Shabanets, u/a/d November 12, 2012 ("Shabanets Trust") filed a Notice of Consent to Removal. Also on February 10, 2020, the Court entered an order converting Debtor's bankruptcy case to Chapter 7. On February 11, 2020, Trustee was appointed as the Chapter 7 trustee. Also on February 11, 2020, as Adv. Dk. No. 27, defendants Olga, individually and in her capacity as the trustee of the Shabanets Trust, and Debtor filed an Answer to the FAC. Defendants admit to the transfer of securities and cash transfers from the Revocable Trust Account to the Irrevocable Trust Account, but deny that the transfers were fraudulent in nature.

On April 2, 2020, as Adv. Dk. No. 35, Trustee filed a notice of

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substitution of Trustee as party-in-interest for Remares. On April 24, 2020, as Adv. Dk. No. 37, Trustee filed a stipulation with Merrill Lynch to dismiss Merrill Lynch as defendant from this adversary. On June 1, 2020, as Dk. No. 51, the Court approved the stipulation, dismissing Merrill Lynch as a defendant. On May 8, 2020, Remares filed a complaint against the Trustee, Debtor, and Olga, seeking declaratory relief regarding the validity, priority, or extent of alleged lien(s) on certain funds deposited with the Court in this case, initiating adversary proceeding number 8:20-ap-01079- TA ("Declaratory Relief Adversary"). On July 20, 2020, Debtor filed a motion to compel trustee to abandon interest in several 529 college saving plans (later granted).

On August 27, 2020, Trustee served on Debtor, and Olga, individually and as Trustee of the 2012 Irrevocable Trust Agreement of Igor Shabanets u/a/d/ November 12, 2012, Plaintiff's First Set Requests for Admissions, Special Interrogatories, and Request for Production of Documents. Defendants failed to serve any responses on Trustee. In consequence pursuant to Federal Rule of Civil Procedure 36 all matters contained in Plaintiff's Requests for Admissions are deemed admitted due to Defendants' failure to respond within 30 days of service of the Requests for Admissions. Fed. R. Civ. P. 36(a)(3). An emergency motion filed by Defendant Shabanets on December 8, 2020 to shorten time for a hearing on withdrawal of the deemed admission was denied. Said Defendants' failure to file a timely response to the summary judgment motion was not addressed.

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,

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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

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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. The Transfers and Badges of Fraud

Trustee asserts that in claims for relief nos. 1-6, the Trustee may rely on state law to avoid, recover and preserve for the benefit of the Estate approximately \$2.546 million in fraudulent transfers of securities and cash made by Debtor to hinder creditors. Trustee's powers to recover fraudulent transfers on behalf of the Estate arise from 11 U.S.C. §§ 541 and 544, in that fraudulent transfer claims are property of the Estate under the exclusive control of the Trustee, cf. 11 U.S.C. § 323, and Trustee may exercise the rights of a hypothetical lien creditor under §544 as of the petition date to recover any transfer pursuant to applicable state law.

Under California law, including the Uniform Voidable Transfer Act ("UVTA") which is codified in Civil Code §§ 3439 et seq., a creditor may avoid a transfer of an interest in property where the transferor transferred the property with the intent to hinder, delay, or defraud one or more of his creditors or where the transferee failed to provide reasonably equivalent value to the debtor. Under relevant California state law:

"[f]raudulent transfers are subdivided into actually fraudulent transfers which are avoidable under California Civil Code § 3439.04(a)(1), or constructively fraudulent transfers applicable under California Civil Code §§ 3439.04(a)(2) or 3439.05." *In re*

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Juarez, 2008 Bankr. LEXIS 4501, at *7 (Bankr. S.D. Cal. 2008) (citing *In re Cohen*, 199 B.R. 709, 716 (9th Cir. BAP 1996)).

The trustee bears the burden of proof on each element of an alleged fraudulent transfer. *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20-21 (2000).

Here, Trustee asserts that the validity of the asserted causes of action is established by Defendants' failure to respond to Plaintiff's requests for admissions (discussed above), which Trustee correctly argues deems those requests for admissions as admitted and conclusively established pursuant to Fed. R. Civ. P. 36(b). Deemed admissions, and nothing more, are enough for entry of summary judgment in favor of the moving party. See, e.g., *Wright v. Paul Revere Life Insurance Co.*, 291 F.Supp.2d 1104, 1111-12 (C.D. Cal. 2003). But further, the Shabanets Defendants did not respond to the motion either and under LBR 7056-1(f), those facts are deemed admitted.

As to the First and Second causes of action under Cal. Civ. Code § 3934, Trustee asserts that sufficient undisputed facts exist to establish Defendants' liability. The California legislature has codified certain indicia of intent to defraud in §3439.04(b) as follows:

- (1) Whether the transfer or obligation was to an insider.
- (2) Whether the debtor retained possession or control of the property transferred after the transfer.
- (3) Whether the transfer or obligation was disclosed or concealed.
- (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

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(5) Whether the transfer was of substantially all the debtor's assets.

(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

Virtually all of the above indicia of fraudulent intent are present in the undisputed facts. Trustee asserts that Debtor's transfer of funds and securities to the Irrevocable Trust Account was a transfer to an insider. Cal. Civ. Code § 3439.04(b)(1). The settlor of the Irrevocable Trust was the Debtor himself, the trustee of the Irrevocable Trust was Debtor's wife, and the beneficiaries of the Irrevocable Trust are Debtor's children, all of whom, Trustee correctly argues, qualify as statutory insiders of the Debtor pursuant to 11 U.S.C. § 101(31). The answer to the Complaint denied that Olga is and was at all relevant times Debtor's wife, but Trustee argues that Debtor's own sworn schedules and statements do not identify Olga as Debtor's ex-wife. More specifically, Trustee asserts, paragraph 1 of Debtor's "Addendum to Statement of Financial Affairs" refers to Olga as Debtor's "wife." The court is aware, through other

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motions, that at some point, Olga left Debtor due to, at least in part, an instance or instances of domestic violence, and settled elsewhere. However, the court is not clear whether at all relevant times Olga was Debtor's wife or ex-wife. As noted above, there is apparently some conflicting evidence. But it may not matter as Trustee's motion illustrates several more badges of fraud and the appropriate time to consider insider status is when the transfers were made, which the court understands occurred all while Igor and Olga lived together.

For example, Trustee asserts that the transfers of securities and cash from the Revocable Trust Account to the Irrevocable Trust Account allowed Debtor to maintain control of those funds, as he could continue to direct Olga to withdraw or transfer funds. Cal. Civ. Code § 3439.04(b) (2). Notwithstanding the absence of Debtor's name from the Irrevocable Trust Account, Trustee argues, Defendants' deemed admissions establish Debtor's continued control over the funds in the Irrevocable Trust Account.

Next, Trustee argues that before the transfers of securities and cash were made on August 28, 2018 and August 29, 2018, Debtor was engaged in at least one lawsuit– the Debtor transferred the securities and cash from the Revocable Trust Account to the Irrevocable Trust Account within one month of being named Defendant in the Florida Action, in which a judgment in excess of \$10 million was ultimately entered. Additionally, Trustee asserts, Debtor was apparently being sued by Global as well, and a judgment was ultimately entered against him in the amount of around \$4.5 million in the lawsuit by Global. Cal. Civ. Code § 3439.04(b)(4). Finally, Trustee asserts, Debtor was also being sued by Vibe Micro, Inc., and a significant judgment was entered against Debtor in favor of Vibe Micro in late 2019.

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Trustee also asserts that the transfers of the securities and cash themselves were transfers of substantially all of Debtor's assets. The transfers at issue include over \$3 million in straight cash and securities assets. Trustee asserts that Debtor's other assets were real property holdings which may be substantially encumbered, and the equity in those properties does not exceed \$3 million. Trustee also asserts that two months after being named Defendant in the Florida Action, Debtor transferred by grant deed a parcel of vacant land in Beverly Hills worth between \$1.2 million to \$2.5 million for no consideration to a company owned by Debtor's Irrevocable Trust. Also, one month after an abstract of judgment for \$4.5 million was entered against Debtor in favor of another creditor, and two months prior filing for relief, Debtor transferred a second piece of real property, his residence in Dana Point, for no consideration to a company owned by the Irrevocable Trust.

Trustee argues that Debtor received no reasonably equivalent consideration for the transfers of the Funds from the Revocable Trust Account to his family's Irrevocable Trust Account. Reasonably equivalent value under the UVTA is measured objectively, from the perspective of the transferor's creditors. See *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1109 (9th Cir. 2010); *Maddox v. Robertson (In re Prejean)*, 994 F.2d 706, 708 (9th Cir. 1993). Here, from a creditor's objective perspective, Trustee argues, based on the surrounding circumstances, Debtor initiated the transfers while under threat of lawsuits to make the securities and cash inaccessible to creditors filing lawsuits against him.

Next, Trustee argues that Debtor transferred the securities and cash to keep them out of reach of his creditors, including and especially Remares. In California, Trustee asserts, all assets in a self-settled revocable trust are property of the settlor and may be levied upon by

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creditors. Cal. Prob. Code §18200. On the other hand, assets in an irrevocable trust for which the judgment debtor is not a beneficiary cannot be levied by judgment creditors. See *Laycock v. Hammer*, 141 Cal.App.4th 25, 31 (2006) (explaining the express terms of a trust determine whether it is irrevocable and trust property is subject to creditors of settlor only where settlor retains power to revoke as provided under Cal. Prob. Code §18200). Thus, Trustee concludes, Debtor's transfers to the Irrevocable Trust Account were clearly intended to keep those funds out of the reach of creditors and unavailable for levy. Cal. Civ. Code § 3439.05(b)(7).

Moreover, these transfers were made when Debtor was insolvent or caused him to become insolvent. In support of this argument, Trustee points to the numerous lawsuits against Debtor by creditors for defaults on loan guarantees filed within 1-2 years of the Petition Date and which contributed to his \$98 million debt, while Debtor's remaining assets totaling a mere \$2,700 reported on his schedules as of the Petition Date.

Finally, Trustee points out that within one year after Debtor made the transfers at issue, he had multimillion-dollar judgments entered against him by both Remares and Global. Cal. Civ. Code § 3439.05(b)(10). In total, as Trustee demonstrates, almost all of the eleven badges of fraud are satisfied in this case, in order to establish Debtor's actually fraudulent intent in making the transfers of cash and securities to the Irrevocable Trust Account. Thus, aided by the "badges of fraud" the court agrees that an intent to hinder, delay and defraud creditors is proven.

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4. Constructively Fraudulent Transfer

As to the Third through Sixth causes action brought pursuant to Cal. Civ. Code. §3439(a)(2)(B) and §3439.05, Trustee asserts that uncontroverted facts establish Defendants' liability.

"A transfer made or obligation incurred by a debtor is voidable as to a creditor... if the debtor made the transfer... [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor... [i]ntended 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 § 3439.04(a)(2)(B). "For a transfer to be avoided under §3439.04(a)(2)... a trustee must show that the 'debtor made the transfer ... without receiving reasonably equivalent value in exchange for the transfer.'" *AFI Holding, Inc. v. Mackenzie*, 525 F.3d 700, 707 (9th Cir. 2008).

Also, "[a] transfer made or obligation incurred by a debtor is voidable as to a creditor... if the debtor made the transfer... [w]ithout 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." Cal. Civ. Code § 3439.05(a). "A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent." Cal. Civ. Code § 3439.02(b). "For a successful claim under Cal. Civ. Code § 3439.05, the Trustee must prove essentially the same elements as those in section 548(a)(1)(B)." *Greenspan v. Orrick, Herrington & Sutcliffe LLP (In re Brobeck, Phleger & Harrison LLP)*, 408 B.R. 318, 347 (Bankr. N.D. Cal. 2009).

Here, Trustee argues that from August 28, 2018 through April 23, 2019, Debtor transferred millions of dollars' worth of securities and cash

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from the Revocable Trust Account to the Irrevocable Trust Account without receiving any value in exchange for the Transfers, let alone any reasonably equivalent value. Trustee asserts that no Defendant has ever identified any exchange of consideration for the transfers from the Revocable Trust Account to the Irrevocable Trust Account.

Based on the above, summary judgment on Claims 3-6 is also appropriate because there is no triable issue of fact as to whether the transfers of securities and cash were fraudulent, made without receipt of reasonably equivalent value (or any value) and at a time when Debtor believed or should have reasonably believed that he would incur debts beyond his ability to pay as they became due, pursuant to Cal. Civ. Code §§ 3439.04(a)(2)(B) and 3439.05, which have substantially the same elements and requirements of proof.

5. Defendants' Possible Defenses

Although Defendants have not opposed the motion, the court examine sthe affirmative defenses raised in Defendants' answer to the FAC. Those affirmative defenses were:

- Failure to Mitigate Damages
- Unclean Hands
- Estoppel
- Failure to State a Cause of Action
- Lack of Legal Notice
- Not a Party to Agreement

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- Statute of Limitations
- Good Faith

As Trustee points out, none of these defenses were presented with any significant level of analysis and Defendants have never sought dismissal or mitigation based on any potentially dispositive legal or equitable theory. Other defenses such as lack of legal notice are not convincing because, as Trustee points out, Defendants filed an answer responsive to the complaint. The closest Defendants have come to interposing a defense is their attempt on December 8, 2020 only one working day before the motion, to file an emergency motion for withdrawal of the deemed admissions which was unsupported by any sufficient showing, and in any event never went to the issue of why the motion itself which was also unopposed. Thus, for the reasons discussed above, Trustee is entitled to summary adjudication as to causes of action 1 through 6 of the FAC.

6. Remares' Opposition: Void vs. Voidable

Remares makes clear that its opposition is limited to the wording of an order granting summary judgment and does not dispute that the transfers in question were, in fact fraudulent. Specifically, in Remares' view, unless the transfers are considered void, the court cannot grant this motion because the Trustee has not included Remares' counterclaims, which seek declaratory relief as to whether the Transfers are "void" as opposed to "voidable", and whether the Court should impose a resulting trust on the Transfers because of Remares' liens (the "Counterclaims").

In support of its argument that the transfers are void as a matter of law, as opposed to voidable, Remares cites California Supreme Court

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cases reaching as far back as 1863. For example, in *Swinford v. Rogers*, 23 Cal. 233, 235-236 (1863), the court observed, "a conveyance made with intent to defraud creditors is void, though there may have been a full and valuable consideration paid therefor. The fraud taints and vitiates it." The California Supreme Court again expressed this opinion in the 1937 case *Everts v. Sunset Farms, Inc.*, 9 Cal. 2d 691, 698 (1937) where the court observed that transfers defrauding creditors are "void and not merely voidable." In more recent times, the California Supreme Court has reiterated this position as cited by Remares in *Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 929 (2016) ("As we said of a fraudulent real property transfer in *First Nat. Bank of L.A. v. Maxwell* (1899) 123 Cal. 360, 371 [55 P. 980], [a] void thing is as no thing." (internal quotations omitted) Remares asserts that even though new statutory schemes such as the California Uniform Fraudulent Transfer Act and later the Uniform Voidable Transfer Act were adopted, they did not overrule or supplant common law remedies. Rather, as the court in *Daff v. Wallace (In re Cass)*, 476 B.R. 602, 617-18 (2012) explained, "in addressing the question of whether a fraudulent transfer is void or voidable under the CUFTA, the court observes that there is no indication in the CUFTA's language or in its legislative history that the California legislature intended to change the common law and establish fraudulent transfers in general as voidable instead of void. Following CUFTA's enactment in 1987, courts and other authorities continue to recognize that a creditor has cumulative remedies with respect to a fraudulent transfer as discussed herein." Again, this doctrine was seemingly reaffirmed as recently as last year in *Berger v. Varum*, 35 Cal.App.5th 1013, 1019 (2019), where the court observed that the remedies in UVTA are cumulative and not the exclusive remedy for fraudulent conveyances and does not supersede the common law of fraudulent transfer. Thus, it can likely be safely assumed that the doctrine that fraudulent conveyances are

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void remains the law. But the court still has questions.

Why does this "void" vs. "voidable" question matter? Remares wants to argue that since the fraudulent conveyances were "void" it is as though they never happened, which would allow its judgment and ORAP liens to attach prepetition when the properties entered the bankruptcy. Remares wants treatment as a lien creditor as opposed to a general unsecured creditor.

As alternate grounds (or perhaps the same theory re-stated) for finding the transfer void, Remares argues that the transfers are "sham transfers" because the Debtor never intended the Irrevocable Trust to obtain true ownership in the Transfers and never intended the money to go to the Trust's beneficiaries. When a settlor transfers assets to a trust to shield them from creditors, while still maintaining control over the assets, the trust is a sham from the outset and the transfers are void, or so this argument goes.

Finally, as a last basis for finding the transfers void, Remares argues that the Trusts were only Debtor's nominees, holding only nominal legal title to the transfers, but not actual legal title, which in turn, makes the transfers void. *See Born v. Koop*, 200 Cal.App.2d 519, 527-528 (1962) ("The word 'nominee' in its commonly accepted meaning connotes the delegation of authority to the nominee in a representative or nominal capacity only, and does not connote the transfer or assignment of the nominee of any property in ownership of the rights of the person nominating him.") Remares argues that an analysis of factors identified as indicators of nominee status heavily favors a finding of nominee status. Those factors are:

(1) Whether inadequate or no consideration was paid by the

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nominees;

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(2) Whether the properties were placed in the nominee's names in anticipation of a lawsuit or other liability while the transferor remains in control of the property;

(3) Whether there is a close relationship between the nominees and the transferor;

(4) Failure to record conveyances;

(5) Whether the transferor retained possession; and

(6) Whether the transferor continues to enjoy the benefits of the transferred property. *Leeds LP v. United States*, 807 F. Supp. 2d 946, 966 (2011).

Here, Remares asserts that every factor except the fourth factor is easily demonstrated on this record, and thus supports a finding that the transfers should be considered void.

But there are major holes in Remares' analysis. First, the authorities cited above, even Remares' authorities, acknowledge that the aggrieved party has a variety of remedies it can pursue to unwind a fraudulent conveyance; the remedies are cumulative not exclusive, and actions under the UVTA are supplemental to common law theories of relief. See *Berger v. Varum*, 35 Cal. App. 5th at 1019 citing *Macedo v. Bosio*, 86 Cal. App. 4th 1044, 1051(2001) and *Wisden v. Superior Court*, 124 Cal. App. 4th 750, 758 (2004). Indeed, the very Act of which Civil Code §§3439.04 and 3439.07 are a part is now helpfully called the "Uniform *Voidable* Transactions Act" formerly known as the Uniform Fraudulent Transfer Act (emphasis added). Section 3437.07 specifically includes "avoidance" as a remedy. This helps explain why many of

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Remares' cases using the "void" language are mostly older cases decided either under common law or earlier versions of the uniform law. The older law also seems to have been adopted by reference in §3439.12. But an issue the Trustee must contend with is found in *Daff v. Wallace (In re Cass)*, 476 B.R. 602, 617-18 (2012) where Judge Kwan held that a creditor's lien could attach post fraudulent transfer because under some California law (as observed above) the transfer is deemed void, or at least that it was an issue for trial, finding that "avoidable" was only intended to deal with contexts involving a good faith transferee. *Id.* at 617 But this court is not convinced that *Cass* is good law for another reason. It does not square with 11 U.S.C. §551, which provides that a transfer avoided under a variety of sections including 544 is automatically "preserved for benefit of the estate." If a transfer is preserved for benefit of the estate, it is antithetical to at the same time hold that subsequent liens diminishing the estate's interest can attach. As the Trustee argues, this court believes the better approach is a flexible one that discourages a race to the courthouse by creditors attempting to lien the conveyed property in diminution of a ratable distribution. See e.g. *In re Thu Thi Dao*, 616 B.R. 103, 116 (Bankr. E.D. Cal 2020) discussing *Rinard v. Positive Investments, Inc. (In re Rinard)*, 451 B.R. 12, 19 (Bankr. C.D. Cal. 2011); See also *Dye v. Rivera (In re Marino)*, 193 B.R. 907, 915 (9th Cir. BAP 1996).

But perhaps the best decision is to delay the question until another day, as did Judge Kwan in *Cass*. The matter of Remares' counter-claims can and should be left for another day and possibly another adversary proceeding, to satisfy Remares due process arguments.

As Trustee notes, Remares has been aggressive and tenacious in pursuing its rights before and throughout the pendency of this bankruptcy case. In June of this year, Remares succeeded on a motion to

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intervene in this adversary proceeding so that it could make sure it had a hand in fashioning any remedy. The court does not see what is inherently inequitable about Remares aggressively pursuing and protecting its interests. Given the amount of money at stake, especially for Remares, its determination is understandable. The court also notes that this appears to be purely a legal dispute, not a factual dispute. As far as the court can tell, despite this sharp disagreement, the underlying facts remain undisputed. The fraudulent nature of the conveyance seems in little doubt so the remaining issue might simply devolve to one of whether Remares should enjoy some enhanced recovery on account of its purported liens, either as a matter of law or settlement.

7. Conclusion

The court finds that the transfers in question are fraudulent conveyances pursuant to Civil Code §3439 and summary adjudication should be granted as to all six causes of action. The transfers are avoided under §550 and preserved for the estate under §551. The court will hold another hearing specifically on the narrow issue of *void ab initio* vs. *voidable*, and/or whether the liens should follow the properties, after Remares and the Trustee are allowed more extensive briefing.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT... Igor Shabanets

Chapter 7

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Olga Shabanets, as trustee of the

Represented By
Bruce A Boice

Olga Shabanets

Represented By
Bruce A Boice

Igor Shabanets

Represented By
Bruce A Boice

Merrill Lynch, Pierce, Fenner &

Represented By
Payam Khodadadi

Movant(s):

Richard A Marshack in his capacity

Represented By
D Edward Hays
Tinho Mang

Richard A Marshack in his capacity

Pro Se

Plaintiff(s):

Richard A Marshack in his capacity

Represented By
D Edward Hays
Tinho Mang

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**

Tuesday, December 15, 2020

Hearing Room 5B

10:30 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1610270098>

ZoomGov meeting number: 161 027 0098

Password: 463496

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

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- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

10:30 AM

8:19-10387 Paul R. Hanson

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA LEASE TRUST, AS SERVICED BY TOYOTA MOTOR CREDIT
CORP
Vs
DEBTOR**

Docket 58

Tentative Ruling:

Tentative for 12/15/20:
Grant. Appearance: optional

Party Information

Debtor(s):

Paul R. Hanson

Represented By
Christine A Kingston

Movant(s):

Toyota Lease Trust, as serviced by

Represented By
Kirsten Martinez

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 15, 2020

Hearing Room

5B

10:30 AM

8:20-13030 Daniel Hernando Ochoa Nieto and Chanel Garcia

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**AMERICAN HONDA FINANCE CORPORTION
Vs.
DEBTORS AND THOMAS H. CASEY, CH 7 TRUSTEE**

Docket 14

Tentative Ruling:

Tentative for 12/15/20:
Grant. Appearance: optional

Party Information

Debtor(s):

Daniel Hernando Ochoa Nieto Pro Se

Joint Debtor(s):

Chanel Garcia Pro Se

Movant(s):

AMERICAN HONDA FINANCE 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, December 15, 2020

Hearing Room 5B

10:30 AM

8:18-13352 Chales Drew Simpson and June P Simpson

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 100

Tentative Ruling:

Tentative for 12/15/20:
Grant unless current post petition or APO stip. Appearance: optional.

Party Information

Debtor(s):

Chales Drew Simpson

Represented By
Christopher J Langley
Michael Smith

Joint Debtor(s):

June P Simpson

Represented By
Christopher J Langley
Michael Smith

Movant(s):

U.S. Bank National Association, as

Represented By
Sean C Ferry
Eric P Enciso

Trustee(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 15, 2020

Hearing Room 5B

10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#4.00 Motion For Relief From The Automatic Stay REAL PROPERTY

**1st UNITED SERVICES CREDIT UNION
Vs.
DEBTOR**

Docket 129

Tentative Ruling:

Tentative for 12/15/20:

The opposition posits that a settlement is expected in near future. The court hopes that succeeds. But that does not change that there is no equity and the property is not necessary to a reorganization under §362(d)(2). There is a limit to how much the court can/should accommodate extra statutory continuing injunctions favoring debtors, at least absent creditor consent. If an arrangement is reached consensually, wonderful. But that is for the parties to decide. Meanwhile, there is no basis for continuing a bankruptcy stay.

Grant.

Appearance: required

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Movant(s):

1st United Service Credit Union

Represented By
Reilly D Wilkinson

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

10:30 AM

CONT... Hoan Dang and Diana Hongkham Dang

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

11:00 AM

8:18-13685 Donald Edward Theriault, Jr.

Chapter 7

#5.00 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 FOR CHAPTER 7 TRUSTEE

Docket 0

Tentative Ruling:

Tentative for 12/15/20:
Allow as prayed. Appearance optional

Party Information

Debtor(s):

Donald Edward Theriault Jr.

Represented By
Joseph C Rosenblit
Tom A Moore

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 15, 2020

Hearing Room 5B

11:00 AM

8:19-10387 Paul R. Hanson

Chapter 7

#6.00 Trustee's Final Report And Applications For Compensation:

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

Docket 53

Tentative Ruling:

Tentative for 12/15/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Paul R. Hanson

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

11:00 AM

8:19-11550 Alain Azoulay

Chapter 7

#7.00 Trustee's Final Report And Applications For Compensation

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

GOE FORSYTHE & HODGES, LLP, ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE

BK GLOBAL, OTHER FEES

COLDWELL BANKER, OTHER FEES

PICKFORD ESCROW, OTHER EXPENSES

Docket 92

Tentative Ruling:

Tentative for 12/15/20:
Allow as prayed. Appearance 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 15, 2020

Hearing Room 5B

11:00 AM

8:19-14445 Kimberly S Connell

Chapter 7

#8.00 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

MANIJEH KHAMNEIPOUR, OTHER EXPENSES

Docket 76

Tentative Ruling:

Tentative for 12/15/20:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Kimberly S Connell

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, December 15, 2020

Hearing Room

5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#9.00 Third Interim Fee Application For Compensation For Period: 6/1/2020 to 11/13/2020

SNELL & WILMER L.L.P. FOR ANDREW STILL, SPECIAL COUNSEL

FEE: \$30,278.00

Expenses: \$643.45

Docket 2879

Tentative Ruling:

Tentative for 12/15/20:
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

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 15, 2020

Hearing Room 5B

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 15, 2020

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#10.00 Third Application for Payment of Interim Fees And/Or Expenses for Period:
6/1/2020 to 8/8/2020:

JOHN J. McLEOD, SPECIAL COUNSEL FOR CHAPTER 7 TRUSTEE

FEE: \$1522.50,

EXPENSES: \$0.

Docket 2888

Tentative Ruling:

Tentative for 12/15/20:
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

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 15, 2020

Hearing Room 5B

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**

Tuesday, December 15, 2020

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#11.00 Seventh Interim Fee Application for Period: 6/4/2020 to 11/15/2020:

HAHN FIFE & COMPANY, ACCOUNTANT

FEE:	\$6,996.00
EXPENSES:	\$0.00

Docket 2877

Tentative Ruling:

Tentative for 12/15/20:
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

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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 15, 2020

Hearing Room

5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#12.00 Seventh Interim Application for Compensation For Period: 10/1/2019 to 9/30/2020:

KAREN NAYLOR, CHAPTER 7 TRUSTEE

FEE: \$30,535.33

EXPENSE: \$274.84

Docket 2881

Tentative Ruling:

Tentative for 12/15/20:
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

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 15, 2020

Hearing Room 5B

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 15, 2020

Hearing Room 5B

11:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

#13.00 Eighth Interim Application For Compensation for Period: 10/1/2019 to 8/31/2020

RINGSTAD & SANDERS LLP, TRUSTEE'S ATTORNEY

FEE: \$258819.50

EXPENSES: \$2436.06

Docket 2882

Tentative Ruling:

Tentative for 12/15/20:
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

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 15, 2020

Hearing Room 5B

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**

Tuesday, December 15, 2020

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#14.00 Chapter 7 Trustee's Motion For Order Compelling Turnover Of Residential Real Property Pursuant to 11 U.S.C. Section 542(a)

Docket 223

Tentative Ruling:

Tentative for 12/15/20:
Granted. Appearance: optional.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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**

Tuesday, December 15, 2020

Hearing Room

5B

11:00 AM

8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

**#15.00 Post-Confirmation Status Conference Of Chapter 11 Plan
(set from 3-26-20 confirmation hearing)
(cont'd from 9-02-20)
(re-scheduled from 12-16-20 per court)**

Docket 38

Tentative Ruling:

Tentative for 12/15/20:

Continue approximately 120 days for further status conference. Should the court expect an administrative closing in meantime? Appearance: required.

Tentative for 9/2/20:

Schedule further post confirmation status conference December 16, 2020 @ 10:00 a.m., debtor to give notice. Appearance optional.

Tentative for 3/25/20:

Confirm. See #7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters other than evidentiary hearings. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through April 30, 2020.

Tentative for 2/5/20:

Confirm.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, December 15, 2020

Hearing Room 5B

11:00 AM

CONT... Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

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

Tuesday, December 15, 2020

Hearing Room 5B

11:00 AM

8:18-10486 Ron S Arad

Chapter 11

#16.00 Objection to Claims Of RBS Citizens, N.A., Citizens Financial Group, Inc

Docket 379

***** VACATED *** REASON: CONTINUED TO 1-13-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE CITIZENS
BANK NA'S RESPONSE DEADLINE AND HEARING DATE ON
DEBTOR'S OBJECTIONS TO CLAIMS OF RBS CITIZENS FINANCIAL
GROUP, INC. ENTERED 12-01-20**

Tentative Ruling:

- NONE LISTED -

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, December 16, 2020

Hearing Room 5B

9:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1606486889>

ZoomGov meeting number: 160 648 6889

Password: 250824

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

9:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
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- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

9:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

9:30 AM

8:20-12120 Wayne Edward Sheppard

Chapter 7

#1.00 CONT'D Hearing RE: Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc. (RE: 16 Dodge Charger - \$20,003.59) [ES Case]

FR: 10-21-20 (Rm 5A)

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wayne Edward Sheppard

Represented By
Julie J Villalobos

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

9:30 AM

8:20-12594 Dale D LaFlam

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and VCFS Auto Leasing Company (RE: 2019 Volvo Xc90 - \$11,906.79) [SC Case]

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dale D LaFlam

Represented By
Andy C Warshaw

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, December 16, 2020

Hearing Room 5B

9:30 AM

8:20-12626 Dana Ray McKinney

Chapter 7

**#3.00 Motion for Approval of Reaffirmation Agreement with Ally Bank
(\$8,042.84 - 2016 Nissan Frontier) [ES CASE] .**

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Ray McKinney

Represented By
Michael Jones

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

9:30 AM

8:20-12978 Paula Martinez

Chapter 7

#4.00 Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation (\$16,031.69 - 2017 Nissan Rogue 2WD) [ES CASE]

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paula Martinez

Represented By
Kevin J Kunde

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, December 16, 2020

Hearing Room 5B

9:30 AM

8:20-12988 Susana Guillen

Chapter 7

#5.00 Motion for Approval of Reaffirmation Agreement with 21st Mortgage Corporation (\$147,970.64 - 2016 Clayton Manufactured Home) [ES CASE]

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Susana Guillen

Represented By
Michael H Colmenares

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, December 16, 2020

Hearing Room 5B

10:00 AM

8:19-13493 **Ralph Maxwell Burnett, III and Shelley Lynn Burnett**

Chapter 11

#6.00 Post-Confirmation Status Conference Of Chapter 11 Plan
(set from 3-26-20 confirmation hearing)
(cont'd from 9-02-20)

Docket 38

***** VACATED *** REASON: RE-SCHEDULED TO 12-15-20 AT 11:00
A.M. PER COURT ORDER**

Tentative Ruling:

Tentative for 9/2/20:
Schedule further post confirmation status conference December 16, 2020 @
10:00 a.m., debtor to give notice. Appearance optional.

Tentative for 3/25/20:
Confirm. See #7

Please note: In light of concerns about COVID-19/Coronavirus and attempts to
implement physical distancing, and pursuant to GO 20-02, telephonic
appearances are mandatory on all matters other than evidentiary hearings.
Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use
CourtCall and free access for parties who do not have an attorney – pro se or self-
represented litigants through April 30, 2020.

Tentative for 2/5/20:
Confirm.

Tentative for 12/11/19:
Approve. Set confirmation dates and other deadlines.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

10:00 AM

CONT... Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

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 16, 2020

Hearing Room 5B

1:30 PM

8:20-12166 Stephen F. Sturm

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan
(cont'd from 10-21-20)

Docket 2

Tentative Ruling:

Tentative for 12/16/20:

The plan cannot be confirmed as filed for basic reasons. First, no treatment at all is described for the Cook secured claim, and treatment of all secured claims is a basic for plan confirmation. The fact that counsel has received some payments is not very persuasive. If there is to be an avoidance of the Cook claim, some reference to this must be made and described in the plan, but nothing appears. If allowance is made of the claim feasibility questions arise which also need to be addressed. Moreover, this is not a new case, so debtor should explain why dismissal is not indicated.

Deny. Appearance: required

Tentative for 10/21/20:

The Equity 1 secured claim must be dealt with formally before a plan can be confirmed. The life estate reportedly owned by debtor must also be valued for "best interest" analysis as well. Appearance is required.

Party Information

Debtor(s):

Stephen F. Sturm

Represented By
Joseph A Weber

Movant(s):

Stephen F. Sturm

Represented By
Joseph A Weber

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

1:30 PM

CONT... Stephen F. Sturm

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 16, 2020

Hearing Room

5B

1:30 PM

8:20-12214 Javier Antonio Sosa

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan
(cont'd from 11-18-20)

Docket 10

Tentative Ruling:

Tentative for 12/16/20:

Debtor must address Trustee's concerns. This case appears to be dragging and as warned last time, more continuances should not be expected.

Appearance: required

Tentative for 11/18/20:

The Trustee and MAMAD correctly observe that on the secured claim maturing before the term of the plan, merely curing arrearages is unavailable but rather the whole of the claim must be paid. This also raises big feasibility questions. Also, the plan does not provide for all creditors as observed by the Trustee.

Appearance required.

Tentative for 10/21/20:

The proper amount of arrearages on the MAMAD claim must be given in the plan. Other deficiencies as noted by the trustee must also be met.

Appearance is required.

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

1:30 PM

CONT... Javier Antonio Sosa

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 1675 Calendar**

Wednesday, December 16, 2020

Hearing Room 1675

1:30 PM

8:20-12615 Fernan Edgardo Lozano

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan
(cont'd from 11-18-20)

Docket 2

Tentative Ruling:

Tentative for 11/18/20:

It would seem that a resolution of the Trustee's objection to the variety of claimed exemptions must be had before the court can evaluate whether the 'best interest of creditors' test is met. Continue?

Appearance: required.

Party Information

Debtor(s):

Fernan Edgardo Lozano

Represented By
Julie J Villalobos

Movant(s):

Fernan Edgardo Lozano

Represented By
Julie J Villalobos
Julie J Villalobos
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

1:30 PM

8:20-12633 Elisabeth Helen Sylvia

Chapter 13

#10.00 Confirmation Of Chapter 13 Plan
(cont'd from 11-18-20)

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Elisabeth Helen Sylvia

Represented By
Kevin J Kunde

Movant(s):

Elisabeth Helen Sylvia

Represented By
Kevin J Kunde
Kevin J Kunde
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, December 16, 2020

Hearing Room 5B

1:30 PM

8:20-12663 Charles Aungkhin

Chapter 13

**#11.00 Confirmation Of Chapter 13 Plan
(cont'd from 11-18-20)**

Docket 5

Tentative Ruling:

Tentative for 12/16/20:
Unless Trustee's points are adequately addressed, dismiss.

Appearance: required

Tentative for 11/18/20:
Without suitable response to the Trustee's and creditor's objection
confirmation cannot be granted.

Appearance: required.

Party Information

Debtor(s):

Charles Aungkhin

Represented By
Scott Kosner

Movant(s):

Charles Aungkhin

Represented By
Scott Kosner
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, December 16, 2020

Hearing Room 5B

1:30 PM

8:20-12711 Leon G. Uroda and Michie Lee Uroda

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 13

Tentative Ruling:

Party Information

Debtor(s):

Leon G. Uroda

Represented By
Tina H Trinh

Joint Debtor(s):

Michie Lee Uroda

Represented By
Tina H Trinh

Movant(s):

Leon G. Uroda

Represented By
Tina H Trinh

Michie Lee Uroda

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 16, 2020

Hearing Room 5B

1:30 PM

8:20-12752 Denae Hesse

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 6

Tentative Ruling:

Party Information

Debtor(s):

Denae Hesse

Represented By
Michael Jay Berger

Movant(s):

Denae Hesse

Represented By
Michael Jay Berger
Michael Jay Berger

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

1:30 PM

8:20-12830 Michael J. Rathgeb

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Michael J. Rathgeb

Represented By
Julie J Villalobos

Movant(s):

Michael J. Rathgeb

Represented By
Julie J Villalobos
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

1:30 PM

8:20-12858 Raymond Hernandez and Myrna Hernandez

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

Party Information

Debtor(s):

Raymond Hernandez

Represented By
Sundee M Teeple

Joint Debtor(s):

Myrna Hernandez

Represented By
Sundee M Teeple

Movant(s):

Raymond Hernandez

Represented By
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple

Myrna Hernandez

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, December 16, 2020

Hearing Room 5B

1:30 PM

8:20-12929 Abel Gutierrez Gutierrez and Adelia Cruz De Gutierrez

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Abel Gutierrez Gutierrez

Represented By
Seema N Sood

Joint Debtor(s):

Adelia Cruz De Gutierrez

Represented By
Seema N Sood

Movant(s):

Abel Gutierrez Gutierrez

Represented By
Seema N Sood
Seema N Sood
Seema N Sood
Seema N Sood

Adelia Cruz De Gutierrez

Represented By
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, December 16, 2020

Hearing Room 5B

3:00 PM

8:16-10620 Rosalie Abad Naval

Chapter 13

#18.00 Trustee's Motion to Dismiss Case Due to Material Default of a Plan Provision
(cont'd from 11-18-20)

Docket 94

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 11-30-20**

Tentative Ruling:

Tentative for 11/18/20:
Mooted by #11?

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Rosalie Abad Naval

Represented By
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

3:00 PM

8:16-10620 Rosalie Abad Naval

Chapter 13

#19.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(cont'd from 11-18-20)

Docket 98

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION UNDER LOCAL BANKRUPTCY RULE 3015-1(N) AND (W) TO
MODIFYPLAN OR SUSPEND PLAN PAYMENTS ENTERED 11-23-20**

Tentative Ruling:

Tentative for 11/18/20:

Has Trustee accepted explanation given in debtor's declaration?

Appearance: required.

Party Information

Debtor(s):

Rosalie Abad Naval

Represented By
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

3:00 PM

8:16-11398 Eric H Furlong

Chapter 13

#20.00 Trustee's Motion To Dismiss Chapter 13 Case

Docket 48

Tentative Ruling:

Tentative for 12/16/20:
Grant absent current status and modification motion on file.

Appearance: required

Party Information

Debtor(s):

Eric H Furlong

Represented By
Brian J Soo-Hoo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

3:00 PM

8:16-11718 Santiago Alvarez

Chapter 13

#21.00 Trustee's Motion To Dismiss Case

Docket 73

Tentative Ruling:

Tentative for 12/16/20:
Grant unless modification motion on file.

Appearance: required

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:16-12695 Adrienne Y. Turner

Chapter 13

#22.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 69

Tentative Ruling:

Tentative for 12/16/20:

Grant unless current or modification motion on file.

Party Information

Debtor(s):

Adrienne Y. Turner

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 16, 2020

Hearing Room 5B

3:00 PM

8:16-14382 Guy A. Rojo and Eva P. Rojo

Chapter 13

#23.00 Trustee's Motion to Dismiss Case failure to make plan payments.

Docket 158

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 9-01-20**

Tentative Ruling:

- NONE LISTED -

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

#24.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 11-18-20)

Docket 100

Tentative Ruling:

Tentative for 12/16/20:
See #25

Tentative for 11/18/20:
Grant absent current status or modification motion on file.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

3:00 PM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

#25.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 104

Tentative Ruling:

Tentative for 12/16/20:

Trustee's comments must be addressed, particularly as concerns the very extended time for payment at the 100% and the fact that the IRS claim is much larger than provided in the plan.

Appearance: required

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

3:00 PM

8:18-11261 Rigoberto Martinez and Geena Martinez

Chapter 13

#26.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 80

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 11-24-20**

Tentative Ruling:

- NONE LISTED -

Party Information

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, December 16, 2020

Hearing Room 5B

3:00 PM

8:18-11474 Brian G. Corntassel

Chapter 13

#27.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 11-18-20)

Docket 87

Tentative Ruling:

Tentative for 12/16/20:
See #28

Tentative for 11/18/20:
Continue to coincide with modification motion December 16.

Tentative for 10/21/20:
Grant unless motion to modify on file. Appearance is optional.

Party Information

Debtor(s):

Brian G. Corntassel

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:18-11474 Brian G. Corntassel

Chapter 13

#28.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 91

Tentative Ruling:

Tentative for 12/16/20:
Trustee's points must be addressed.

Party Information

Debtor(s):

Brian G. Corntassel

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan Chapter 13

#29.00 Trustee's Verified Motion To Dismiss Case Failure To Make Plan Payments

Docket 140

Tentative Ruling:

Tentative for 12/16/20:
Grant unless current by date fixed for mid-January.

Appearance: required

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:18-13236 Chad James Carter and Terah Rose Carter

Chapter 13

#30.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments

Docket 75

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 11/05/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chad James Carter

Represented By
Joseph A Weber
Fritz J Firman
Amelia Puertas-Samara

Joint Debtor(s):

Terah Rose Carter

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:18-14134 Lam Dang Nguyen

Chapter 13

#31.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 11-18-20)

Docket 35

Tentative Ruling:

Tentative for 12/16/20:
Grant unless current or motion to modify on file.

Appearance: required

Tentative for 11/18/20:
Grant absent current status or modification motion on file.

Appearance: optional.

Party Information

Debtor(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, December 16, 2020

Hearing Room 5B

3:00 PM

8:19-10709 Ernest E Gonzales

Chapter 13

#32.00 Trustee's Motion To Dismiss Case failure To Make Plan Payments.

Docket 34

Tentative Ruling:

Tentative for 12/16/20:

Deny provided the amount needed to come current is presented at or before the hearing. If not, grant.

Party Information

Debtor(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, December 16, 2020

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

**#33.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 11-18-20)**

Docket 69

Tentative Ruling:

Tentative for 12/16/20:
Continue to coincide with modification motion.

Tentative for 11/18/20:
Continue to coincide with modification motion filed November 3.

Appearance: optional

Party Information

Debtor(s):

Wendie Lorraine Brigham

Represented By
Christopher J Langley
Michael Smith

Trustee(s):

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 16, 2020

Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

**#34.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 11-18-20)**

Docket 68

Tentative Ruling:

Tentative for 12/16/20:
See #35.

Tentative for 11/18/20:
Continue to December 16 to coincide with modification motion.

Appearance: optional.

Tentative for 10/21/20:
Grant unless current or modification motion on file. Appearance is optional.

Party Information

Debtor(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 16, 2020

Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

#35.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 73

Tentative Ruling:

Tentative for 12/16/20:

According to the Trustee the debtor is in default even under proposed modified terms; further, it granted the term would be longer than even statutorily extend term. Absent explanation, deny.

Appearance: required

Party Information

Debtor(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 16, 2020

Hearing Room 5B

3:00 PM

8:19-13056 Jennifer S. Monson

Chapter 13

#36.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 50

*** VACATED *** REASON: OFF CALENDAR - DEBTOR'S NOTICE
OF CONVERSION TO CHAPTER 7 ENTERED 11-24-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(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, December 16, 2020

Hearing Room 5B

3:00 PM

8:19-14502 Andy T. Torres

Chapter 13

#37.00 Trustee's Verified Motion To Dismiss Case

Docket 80

Tentative Ruling:

Tentative for 12/16/20:
Grant absent conversion.

Appearance: required

Party Information

Debtor(s):

Andy T. Torres

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 16, 2020

Hearing Room 5B

3:00 PM

8:20-11571 Amparo Ulloa

Chapter 13

#38.00 Trustee's Motion To Dismiss Case FailureTo Make Plan Payments.

Docket 31

Tentative Ruling:

Tentative for 12/16/20:
Grant absent current status, or at least by a date fixed in mid-January.

Appearance: required

Party Information

Debtor(s):

Amparo Ulloa

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:19-11810 Helen Ojeda

Chapter 13

#39.00 Application For Compensation for Period: 5/10/2019 to 11/3/2020:

ANERIO V ALTMAN, DEBTOR'S ATTORNEY

FEE: \$2,790.00

EXPENSES: \$310.27

Docket 55

Tentative Ruling:

Tentative for 12/16/20:
Grant. Appearance optional.

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, December 16, 2020

Hearing Room 5B

3:00 PM

8:20-13216 April Joy Gonzales Alvarado

Chapter 13

#40.00 Order To Show Cause Why Case Should Not Be Dismissed Debtor Has Multiple Cases Pending That Have Not Been Dismissed - Case No.: 8:18-13072 TA

Docket 1

Tentative Ruling:

Tentative for 12/16/20:
Dismiss. Appearance: required

Party Information

Debtor(s):

April Joy Gonzales Alvarado Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01141 East West Bank v. Kim et al

- #1.00** STATUS CONFERENCE RE: Complaint to determine nondischargeability of debt, in objection to debtor's discharge pursuant to 11 U.S.C. Section 523(a)(2) (A) and (B), and 727(a)(2)(A); or alternatively for: (1) Avoidance and recovery of preferential transfers [11 U.S.C. Section 547(b), and 550]; (2) Avoidance and recovery of fraudulent transfers [11 U.S.C. Section 548, and 550]; (3) Preservation of avoided transfers [11 U.S.C. Section 551]; (4) Disallowance of any claims held by defendants [11 U.S.C. Section 502(d); and (5) California voidable transactions act [Civil Code Section 3439-3439.14]

Docket 1

Tentative Ruling:

Tentative for 12/17/20:

Deadline for completing discovery: November 23, 2021

Last date for filing pre-trial motions: December 2, 2021

Pre-trial conference on: December 16, 2021 @ 10:00AM

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Defendant(s):

Katie Ki Sook Kim

Pro Se

Kiddo's E3, Inc.

Pro Se

Chrysanthemum by Eileen LLC

Pro Se

SMT Apparel, Inc.

Pro Se

Verna Fashion, Inc.

Pro Se

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Central District of California
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10:00 AM

CONT... Katie Ki Sook Kim

Chapter 7

Plaintiff(s):

East West Bank

Represented By
Clifford P Jung

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:13-19732 Steven William Gentile

Chapter 11

**#2.00 PRE-TRIAL CONFERENCE RE: Order To Show Cause Why Sanctions Should Not Be Issued Pursuant To 11 USC Section 105 And 524
(set from s/c hrg held on 10-28-20)**

Docket 0

***** VACATED *** REASON: CONTINUED TO 1-28-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE=TRIAL
HEARING ENTERED 12-14-20**

Tentative Ruling:

Tentative for 10/28/20:
Continue in favor of mediation?

Party Information

Debtor(s):

Steven William Gentile

Represented By
Michael G Spector
Vicki L Schenum
Rafael R Garcia-Salgado
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#3.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 12-02-20 per order on stip to further cont s/c entered 11-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON INITIAL STATUS CONFERENCE ENTERED 12-14-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Defendant(s):

Placentia Development Company

Pro Se

Plaintiff(s):

Bridgemark Corporation

Represented By
Erin E Gray
James KT Hunter
William N Lobel

**United States Bankruptcy Court
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8:20-10143 Bridgemark Corporation

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 12-02-20 per stip. to cont. hrgs entered 11-13-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR
RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11
CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 2/26/20:

The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

**United States Bankruptcy Court
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Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#5.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 12-02-20 per order approving stip, to cont, hrgs entered
11-13-20)

**PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR**

Docket 53

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR
RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11
CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 2/26/20:

If all that is requested is that both sides be free to complete the state court action, including post trial motions and appeals, to final orders, that is appropriate. Enforcement stes will require further orders of this court.

Grant as clarified.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

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8:20-10143 Bridgemark Corporation

Chapter 11

#6.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 12-02-20 per order apprvng stip. to cont. hrgs entered 11-13-20)

Docket 93

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR
RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11
CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 3/25/20:

Stipulation to continue to 4/29/20 expected per phone message. Status?

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

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8:20-10143 Bridgemark Corporation

Chapter 11

#7.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b) (cont'd from 12-02-20 per order apprvg stip. to cont. hrgs, entered 11-13-20)

Docket 54

***** VACATED *** REASON: CONTINUED TO 2-10-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS ON: (1) CHAPTER 11 STATUS CONFERENCE; (2) MOTION FOR RELIEF FROM AUTOMATIC STAY; (3) MOTION TO DISMISS CH 11 CASE ETC. ENTERED 12-14-20**

Tentative Ruling:

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

1. Basic Background Facts

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately \$42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than \$25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not

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Chapter 11

appear to be any other debts listed as disputed, contingent, or unliquidated. The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court trial this testimony was elicited:

"We cannot pay the 27 million We have no ability to pay any of this. ... I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done."
Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the \$27 million in compensatory damages at \$1 million per year, interest-free, over 27 years. See *Id.* at 3156:20-23 ["We can't pay it. ... If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.... It just goes down and down and down." *Id.* at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

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2. Motion to Dismiss & Relief from Stay Standards

Section 1112(b) of the Bankruptcy Code provides:

"[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id.* § 1112(b)(4)(A), and "gross mismanagement of the estate," *Id.* § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section ... for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals

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as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.']. Thus, the shorthand phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or feelings. Instead, the question is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id.*

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. See e.g., *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the

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litigation"; and

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- "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes and citations omitted).

"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood)*, 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

3. Was Debtor's Petition Filed for a Proper Purpose?

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917–18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032,

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1048 (9th Cir. 2013) where the court found:

Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the judgment or cover the cost of a supersedeas bond. The bankruptcy court found that the Fraud Judgment amounted to over \$12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id.* It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying

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a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation." *Marshall*, 721 F.3d at 1048 (quoting 298 B.R. at 681)). PDC persuasively argues that it would be inappropriate to infer a broader rule from *Marshall*. PDC argues with some persuasion that the other cases cited by Debtor were ones in which the courts based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id.* at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id.*

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel)*, 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately \$3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id.* at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id.* The debtor later amended his plan to provide that if the judgment were upheld on appeal, he

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would liquidate his assets and give the proceeds to the judgment creditor. *Id.* The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of the circumstances" warranted dismissal of the case for cause. *Id.* at *4.

PDC argues that Debtor has admitted in the authorizing resolution attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11" Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. After all, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to make a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), *aff'd*, 565 B.R. 527 (S.D.N.Y. 2017), *aff'd*, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets" As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26,

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2011).

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PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with competing demands to Debtor's assets. All other claims against Debtor are *de minimis* relative to the Judgment, and also appear to be undisputed. Cf. *In re Mense*, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately \$4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than \$700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current

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case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a reorganization is likely not feasible due to the enormous judgment debt and Debtor's ever diminishing product source. The court is also not impressed with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, December 17, 2020

Hearing Room 5B

10:00 AM

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assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable extension to answer these questions about just how probable a reorganization is or can be despite these obstacles. In this the court is uninterested in platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.

Party Information

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