

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

Tuesday, January 5, 2021

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/1603439233>

ZoomGov meeting number: 160 343 9233

Password: 642922

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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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

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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10:30 AM

8:20-13122 Brandon Rosales and Jesseca Rosales

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**ACAR LEASING LTD
Vs.
DEBTORS**

Docket 11

Tentative Ruling:

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Brandon Rosales

Represented By
Joseph M Tosti

Joint Debtor(s):

Jesseca Rosales

Represented By
Joseph M Tosti

Movant(s):

ACAR Leasing LTD d/b/a GM

Represented By
Sheryl K Ith

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:16-13829 Diana Solis

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 12-01-20)

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 72

***** VACATED *** REASON: CONTINUED TO 3-02-21 AT 10:30 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 1
-04-21**

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
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10:30 AM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**CREDIT UNION OF SOUTHERN CALIFORNIA
Vs
DEBTOR**

Docket 110

Tentative Ruling:

Tentative for 1/5/21:

Grant unless current or APO stipulation. Appearance: optional

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Movant(s):

Credit Union of Southern California,

Represented By
Nichole Glowin
Arnold L Graff

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

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

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 12-15-20)

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTORS**

Docket 100

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 12-18-20**

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
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CONT... Chales Drew Simpson and June P Simpson

Chapter 13

**United States Bankruptcy Court
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10:30 AM

8:20-10493 Terry Gonzalez

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**WILMINGTON TRUST
Vs.
DEBTOR**

Docket 69

Tentative Ruling:

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:20-11571 Amparo Ulloa

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY
[RE: 10511 Imperial Ave, Garden Grove, CA 92843-2401] .

**U.S. NATIONAL BANK ASSOCIATION
Vs.
DEBTOR**

Docket 34

***** VACATED *** REASON: OFF CALENDAR - ORDER AND NOTICE
OF DISMISSAL - ARISING FROM THE MOTION TO DISMISS
CHAPTER 13 ENTERED 12-18-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amparo Ulloa

Represented By
Matthew D. Resnik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:20-12214 Javier Antonio Sosa

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

**MAMAD LLC
Vs
DEBTOR**

Docket 41

Tentative Ruling:

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

Movant(s):

MAMAD, LLC

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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10:30 AM

8:20-12663 Charles Aungkhin

Chapter 13

#8.00 Motion for relief from the automatic stay REAL PROPERTY

**CIVIC FINANCIAL SERVICES, LLC
Vs.
DEBTOR**

Docket 19

***** VACATED *** REASON: OFF CALENDAR - ORDER AND NOTICE
OF DISMISSAL ARISING FROM CHAPTER 13 CONFIRMATION
HEARING ENTERED 12-18-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Aungkhin

Represented By
Scott Kosner

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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8:20-12871 Torrin Myles Rossi

Chapter 7

#9.00 Motion for relief from automatic stay ACTION IN NONBANKRUPTCY FORUM

**KE TANG
Vs.
DEBTOR**

Docket 16

Tentative Ruling:

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Torrin Myles Rossi

Represented By
Ronald A Gorrie

Movant(s):

Ke Tang

Represented By
D Edward Hays

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:20-12963 World of Dance Tour Inc.

Chapter 11

**#10.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
[Re: Los Angeles Superior Court Case No. 20STCP02378]**

AL HASSAS AND SWEET LEMONS, LLC

Vs.

DEBTOR

Docket 64

Tentative Ruling:

Tentative for 1/5/21:

This is the motion of creditors Al Hassas and Sweet Lemons, Inc. for limited relief of stay to confirm its recently obtained arbitration award with the Superior Court. Notably, relief to levy on any award, even if confirmed, is not sought by this motion (and would not be granted at this early juncture). The debtor's main defense is that it needs a breathing spell from litigation to focus on achieving, if possible, a consensual plan of reorganization.

Debtor points to the close schedule for confirming a plan that is a hallmark of Subchapter V cases. While Debtor's points are not without some appeal, and the court has every wish for debtor's success, the preponderance of factors, including under Curtis, favor granting the limited relief requested. The court observes that without a liquidated claim the ability of the parties to agree to even basic terms of a repayment over time must be quite challenged. This must clearly be the case for, among other things, debtor continues to dispute the fundamental correctness of the arbitration award, and claims that the arbitrator should have recused. That might be so (no opinion is offered) but will need to be determined as a matter of state law, and not re-litigated in this court. Perhaps an appeal will need to be filed and prosecuted, but again that involves questions purely of state law. While the expense and inconvenience of an appeal (or other post arbitration proceeding) is regrettable, the court suspects that until the basics of the claim amount are agreed it is rather unlikely that a plan can be confirmed. This is not because the debtor needs an impaired consenting class (not needed in

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CONT... World of Dance Tour Inc. Chapter 11

Subchapter V) but because other basics such as feasibility will require at least the basics about how much is owed. This opinion should not be read as an invitation to extensive postponements; there is still an expectation of an efficient timetable to confirmation. Instead, debtor will, absent an agreed amount owed, need to incorporate the vagaries of litigation or the appeal into plan terms which themselves must also pass the feasibility and good faith requirements.

Grant for purposes of liquidation of claim only. Appearance: required

Party Information

Debtor(s):

World of Dance Tour Inc.

Represented By
Fred Neufeld

Movant(s):

Sweet Lemons, LLC

Represented By
Alan I Nahmias
Scott H Noskin

Al Hassas

Represented By
Alan I Nahmias
Scott H Noskin

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
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8:20-12963 World of Dance Tour Inc.

Chapter 11

**#11.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
[Re: Orange County Superior Court Case No. 30-2020-01129569]**

**AL HASSAS AND SWEET LEMONS, LLC
Vs.
DEBTOR**

Docket 68

Tentative Ruling:

Tentative for 1/5/21:
See #10. Appearance: required

Party Information

Debtor(s):

World of Dance Tour Inc.

Represented By
Fred Neufeld

Movant(s):

Sweet Lemons, LLC

Represented By
Alan I Nahmias
Scott H Noskin

Al Hassas

Represented By
Alan I Nahmias
Scott H Noskin

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:19-15027 Mohamed M Elhendi and Samar Abdelghany

Chapter 7

#12.00 Motion To Withdraw AsThe Debtors' Attorney of Record

Docket 129

Tentative Ruling:

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Mohamed M Elhendi

Represented By
David Brian Lally

Joint Debtor(s):

Samar Abdelghany

Represented By
David Brian Lally

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

**#13.00 Application To Employ Clarence Yoshikane / Berkshire Hathaway
HomeServices as Real Estate Agent**

Docket 220

Tentative Ruling:

Tentative for 1/5/21:
Grant. 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
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Tuesday, January 5, 2021

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11:00 AM

8:19-14600 Consumer Financial Alliance LLC

Chapter 7

#14.00 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 12-01-20)

Docket 48

Tentative Ruling:

Tentative for 1/5/21:
Status?

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

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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

#15.00 Application For Compensation For Interim Fees And Expenses:

**LORI J. ENSLEY FOR ROBERT E. BICHER & ASSOCIATES , CONSULTANT
FORENSIC ANALYST FOR CHAPTER 7 TRUSTEE**

FEE: \$22893.00

EXPENSES: \$164.78

Docket 91

Tentative Ruling:

Tentative for 1/5/21:
Allow as prayed. 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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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

#16.00 First Interim Application For Compensation And Reimbursement Of Expenses
For Period: 5/8/2018 to 12/15/2020:

**GOE FORSYTHE & HODGES LLP fka GOE & FORSYTHE, LLP, TRUSTEE'S
ATTORNEY**

FEE: \$294,372.50

EXPENSES: \$2,359.80

Docket 93

Tentative Ruling:

Tentative for 1/5/21:

As prayed \$294,372.50 plus costs allowed on interim basis. \$80,000 may be
paid. 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

**United States Bankruptcy Court
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Tuesday, January 5, 2021

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11:00 AM

8:11-15702 Jeffrey D Torkelson

Chapter 7

#17.00 Objection to Claim Number 4 by Claimant Darrell W. Cook & Associates, Inc.

Docket 46

Tentative Ruling:

Tentative for 1/5/21:

This is the trustee's objection to claim #4 which is for fees allegedly earned in January or February 2020 by claimant attorney Darrell W. Cook & Associates. Trustee's motion is apparently opposed by the claimant's motion for leave to file a late claim under the grounds that the claimant was excusably unaware of the reopening of the bankruptcy. The claimant's motion is not technically on calendar and so is not considered. While most of the claimant's papers focus on lack of notice that is not really the issue. The issue is more one of standing. The litigation rights were fixed in the prepetition past and so are property of the estate. Since they were not scheduled they were not abandoned to the debtor upon the earlier closing. In consequence, claimant has no right to make a claim on estate property the debtor did not own and in which he had no rights to engage claimant's services. There might be a *quantum meruit* theory in equity for a charge respecting value conferred (no opinion is expressed), but that is not reflected in this claim and is not supported with any evidence and cannot save the claim as written.

Sustain.

Party Information

Debtor(s):

Jeffrey D Torkelson

Represented By
Edward T Weber

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
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ZoomGov meeting number: 160 612 8679

Password: 029357

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Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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10:00 AM

8:12-10105 Walldesign, Inc., a subchapter S corporation

Chapter 11

**#1.00 CONT Scheduling And Case Management Conference
(cont'd from 10-14-20)**

[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 1/6/21:
Continue for further conference April 7, 2021 @ 10:00AM. Further status report due ten days in advance. Appearance: optional

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?

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):

Walldesign, Inc., a subchapter S

Represented By
Marc J Winthrop

Movant(s):

Walldesign, Inc., a subchapter S

Represented By
Marc J Winthrop

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CONT... Walldesign, Inc., a subchapter S corporation

Chapter 11

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10:00 AM

8:20-12278 Bryan Joseph Klinger

Chapter 11

**#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 9-23-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED ON
11-17-20**

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

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8:12-23407 Joel J Spinosi

Chapter 11

**#3.00 Motion by Reorganized Debtor for Entry of Discharge
(cont'd from 12-02-20 per order apprvg stip. to cont. mtn entered 11-30-20)**

Docket 236

Tentative Ruling:

Tentative for 1/6/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Joel J Spinosi

Represented By
M. Jonathan Hayes
Roksana D. Moradi-Brovia

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8:20-10958 Bradley Ray Fox

Chapter 11

#4.00 Motion For Leave to Withdraw as Counsel for the Debtor; and An Extension of Time for the Debtor to File a Plan and Disclosure Statement

Docket 89

Tentative Ruling:

Tentative for 1/6/21:

Grant motion to withdraw. However, the obligation to receive proceeds from recent authorized sale is not relieved and will not be until further order. The court expects that Mr. Spector will submit a declaration as to status of proceeds/sale within the next 14 days. Deadline to file a plan and disclosure is extended through January 31, 2021 and the UST is requested to mark that date (or shortly after) for hearing on motion to convert or dismiss as may be in the interest of creditors. Appearance: required

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Michael G Spector
Vicki L Schenum

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8:20-11749 Navarrete Investments, LLC

Chapter 11

**#5.00 Motion In Chapter 11 Case For Order Authorizing Use Of Cash Collateral
[11 U.S.C. Section 363]
(cont'd from 11-04-20)**

Docket 30

Tentative Ruling:

Tentative for 1/6/21:
Continue to coincide with UST's recent motion to convert or dismiss.
Appearance: required

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

**United States Bankruptcy Court
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Wednesday, January 6, 2021

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10:00 AM

CONT... Navarrete Investments, LLC

Chapter 11

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 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, January 7, 2021

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/1601782403>

ZoomGov meeting number: 160 178 2403

Password: 404211

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
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Thursday, January 7, 2021

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:

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10:00 AM

CONT...

Chapter

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01088 Marshack v. Interstate Oil Company

**#1.00 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 12-03-20 per order granting stip. to cont. s/c entered 11-03-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-11-21 AT 10:00 A.M.
PER ORDER GRANTING MOTION TO CONTINUE STATUS
CONFERENCE ENTERED 1-04-21**

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, January 7, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

Adv#: 8:20-01097 AEPC Group, LLC v. SLATE ADVANCE

- #2.00** 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 10-29-20)**

Docket 0

Tentative Ruling:

Tentative for 1/7/21:

In view of late status report, continue to February 25, 2021 at 10:00 a.m.

Appearance: required.

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.

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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

CONT... AEPC Group, LLC

Chapter 11

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
Central District of California
Santa Ana
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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC et al

#3.00 STATUS CONFERENCE RE: First Amended Complaint For: (1) Declaratory Relief; (2) Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550; (3) Unjust Enrichment / Disgorgement; (4) Avoidance and Preservation of Claims Pursuant to 11 U.S.C. §§ 502, 506, 544, and 510(c); (5) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548 and 550; (6) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544, 548 and 550; (7) Usury; (8) Injunction; (9) Determination of Liens Pursuant to 11 U.S.C. §§ 502, 506 and 551; (10) Unconscionability; (11) Negligence Per Se - Violation of California Finance Lending Law; (12) Violation of California Business and Professions Code Section 17200; and (13) Fraud (set from another summon issued on 10-16-20 per amended complaint)

Docket 13

***** VACATED *** REASON: CONTINUED TO 3-11-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 12-23-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski
Timothy W Evanston

Corefund Capital, LLC

Pro Se

GMA USA, LLC

Pro Se

YES Funding Services, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe
Rafael R Garcia-Salgado

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5B Calendar**

Thursday, January 7, 2021

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

#4.00 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 12-10-20)

Docket 1

Tentative Ruling:

Tentative for 1/7/21:
See #7

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.

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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Tentative for 6/6/19:
While waiting for a Rule 56 motion a dispute has arisen re: real party in interest.

Continue status conference 90 days with expectation that a substitution motion, and maybe Rule 56, will be filed in the meantime.

Tentative for 3/7/19:
It would seem that the areas still subject to reasonable dispute all go to whether the Fus committed fraud between the inception of the credit in May of 2008 and the onset of the admitted fraud commencing October of 2008. Another issue would be the usual predicates to fraud such as reasonable reliance by bank personnel or auditors on statements made and materials given during that period. On damages, it might also.

While the court can identify the window of time that is relevant, it has no inclination to limit the means of discovery which can include all of the normal tools: depositions, subpoenas, including to third parties, and interrogatories and/or requests for admission.

Party Information

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

**United States Bankruptcy Court
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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Thomas Fu (Deceased)

Mark Anchor Albert

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
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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

#5.00 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

***** VACATED *** REASON: THIS IS A DUPLICATE ENTRY - PLEASE
SEE MATTER #6**

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
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CONT... Cheri Fu

Chapter 7

**United States Bankruptcy Court
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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 12-10-20)

Docket 0

Tentative Ruling:

Tentative for 1/7/21:
See #7

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

**United States Bankruptcy Court
Central District of California
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Thursday, January 7, 2021

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10:00 AM

CONT... Cheri Fu

Chapter 7

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.

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

**United States Bankruptcy Court
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10:00 AM

CONT... Cheri Fu

Chapter 7

James J Joseph (TR)
Paul R Shankman
Lisa Nelson
James Andrew Hinds Jr

**United States Bankruptcy Court
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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 Order To Show Cause Why Case Should Not Be Dismissed For Failure To Prosecute Re: Complaint

Docket 1

Tentative Ruling:

Tentative for 1/7/21:
Status? Where are we going with this proceeding?

Appearance required.

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
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10:00 AM

CONT... Cheri Fu

Chapter 7

Trustee(s):

James J Joseph (TR)

Represented By

James J Joseph (TR)

Lisa Nelson

James Andrew Hinds Jr

**United States Bankruptcy Court
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Thursday, January 7, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#8.00 PRE-TRIAL 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) (cont'd from 7-23-20)

Docket 1

Tentative Ruling:

Tentative for 1/7/21:
Continue to hear settlement referred to in December 23, 2020 Notice?

Appearance: required

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.

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

Porsche Financial Services Inc

Represented By
Stacey A Miller

**United States Bankruptcy Court
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Thursday, January 7, 2021

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10:00 AM

CONT... Igor Shabanets

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
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Thursday, January 7, 2021

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5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#9.00 PRE-TRIAL 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)
(set from s/c hrg held on 9-01-20)

Docket 571

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE HEARING ON MOTION FOR ADMINSTRATIVE
CLAIM BY TERRACE TOWER ORANGE COUNTY, LLC ENTERED 12-
09-20**

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.

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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.

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
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
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Thursday, January 7, 2021

Hearing Room 5B

11:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

#10.00 Defendant's Motion For Judgment On The Pleadings Pursuant To FRCP 12(C)

Docket 243

***** VACATED *** REASON: CONTINUED TO 1-28-21 AT 11:00 A.M.
PER ORDER CONTINUING HEARING RE: DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS ENTERED 12-23-20**

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

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

**United States Bankruptcy Court
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Thursday, January 7, 2021

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

#11.00 Appellee Remares Global, LLC's Motion to Strike Portions of Appellants'
Designation of Record

Docket 85

Tentative Ruling:

Tentative for 1/7/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Represented By
Bruce A Boice

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
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11:00 AM

CONT...

Igor Shabanets

Tinho Mang

Chapter 7

**United States Bankruptcy Court
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Thursday, January 7, 2021

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC et al

#12.00 Motion To Dismiss First Amended Complaint Pursuant To Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6)

Docket 20

***** VACATED *** REASON: CONTINUED TO 3-11-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT CAPCALL, LLC TO CONTINUE HEARING ON MOTION
TO DISMISS ENTERED 12-17-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Corefund Capital, LLC

Represented By
Lei Lei Wang Ekvall

GMA USA, LLC

Represented By
Lei Lei Wang Ekvall

YES Funding Services, LLC

Represented By
Lei Lei Wang Ekvall

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski
Timothy W Evanston

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe
Rafael R Garcia-Salgado

**United States Bankruptcy Court
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Thursday, January 7, 2021

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11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, January 12, 2021

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/1605567382>

ZoomGov meeting number: 160 556 7382

Password: 609442

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
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Courtroom 5B Calendar**

Tuesday, January 12, 2021

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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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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Judge Theodor Albert, Presiding
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Tuesday, January 12, 2021

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, January 12, 2021

Hearing Room 5B

10:30 AM

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

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

WELLS FARGO BANK N.A., AS TRUSTEE, FOR CARRINGTON MORTGAGE
LOAN TRUST, SERIES 2006-NC1 ASSET-BACKED PASS-THROUGH
CERTIFICATES
Vs
DEBTORS

Docket 103

Tentative Ruling:

Tentative for 1/12/21:
Grant. Appearance: optional

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., as Trustee,

Represented By
Christopher Giacinto
Darlene C Vigil
Julian T Cotton

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, January 12, 2021

Hearing Room 5B

10:30 AM

8:20-12214 Javier Antonio Sosa

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK N.A., SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A.
Vs
DEBTOR

Docket 37

Tentative Ruling:

Tentative for 1/12/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

Movant(s):

U.S. Bank N.A., successor trustee to

Represented By
Robert P Zahradka

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, January 12, 2021

Hearing Room 5B

11:00 AM

8:20-10534 Nabil Machhor and Fadia A. Machhor

Chapter 7

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

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

SHULMAN BASTIAN FRIEDMAN & BUI LLP, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR TRUSTEE

Docket 0

Tentative Ruling:

Tentative for 1/12/21:

Allow as prayed, including the agreed 15% reduction in the Shulman firm's application. Appearance: optional

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, January 12, 2021

Hearing Room 5B

11:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

#4.00 Motion For Order To: 1. Compel Attendance For Examination At The Meeting Of Creditors; and 2. Compel Debtor To Provide The Trustee Of A Copy Of His Last Filed Tax Return

Docket 40

Tentative Ruling:

Tentative for 1/12/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Jee Hyuk Shin

Pro Se

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, January 12, 2021

Hearing Room

5B

11:00 AM

8:14-17318 Antoine A Johnson and Kelly J Johnson

Chapter 7

#5.00 Motion for Order Disallowing Debtors' Claimed Exemption and Requiring Turnover of Non-Exempt Funds (cont'd from 12-08-20)

Docket 36

Tentative Ruling:

Tentative for 1/12/21:

The court understood that the trustee was awaiting passage of the claims bar in order to determine how much of the claimed exemption in the litigation proceeds would be needed. The court was hoping for an update but has seen nothing.

Status?

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

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

CONT...

Antoine A Johnson and Kelly J Johnson

Chapter 7

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.

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

**United States Bankruptcy Court
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11:00 AM

CONT... Antoine A Johnson and Kelly J Johnson

Chapter 7

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 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.

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Tuesday, January 12, 2021

Hearing Room 5B

11:00 AM

CONT... Antoine A Johnson and Kelly J Johnson

Chapter 7

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

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

Wednesday, January 13, 2021

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/1606770361>

ZoomGov meeting number: 160 677 0361

Password: 087353

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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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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- 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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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, January 13, 2021

Hearing Room 5B

10:00 AM

8:20-11749 Navarrete Investments, LLC

Chapter 11

#1.00 U.S. Trustee Motion to Dismiss Case or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. § 1112(B);

Docket 70

Tentative Ruling:

Tentative for 1/13/21:

Grant. Dismiss or convert at movant's option.

Party Information

Debtor(s):

Navarrete Investments, LLC

Represented By
Julian K Bach

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, January 13, 2021

Hearing Room 5B

10:00 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

#2.00 Post-Confirmation Status Conference RE: Chapter 11 Voluntary Petition

Docket 1

Tentative Ruling:

Tentative for 1/13/21:

Continue conference to coincide with final payment due under the plan in approximately May. Appearance:optional

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

**United States Bankruptcy Court
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Wednesday, January 13, 2021

Hearing Room 5B

10:00 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

**#3.00 Post-Confirmation Debtor's Motion To Modify Their Chapter 11 Plan To Retain
Their Personal Residence Located At 15401 Dogwood, Westminster, CA**

Docket 267

Tentative Ruling:

Tentative for 1/13/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

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

Wednesday, January 13, 2021

Hearing Room

5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

#4.00 Post Confirmation Status Conference
(con't from 6-24-2020 per order to continue entered 3-20-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-10-21 AT 10:00 A.M.
PER ORDER GRANTING MOTION TO CONTINUE POST-
CONFIRMATION STATUS CONFERENCE PURSUANT TO LBR 9013-1
(m) ENTERED 12-23-20**

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.

Please be advised that CourtCall has announced reduced 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 3/4/20:

Continue for further status conference in about 120 days.

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Hearing Room 5B

10:00 AM

CONT... Gregory Anton Wahl

Chapter 11

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.

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?

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Hearing Room 5B

10:00 AM

CONT... Gregory Anton Wahl

Chapter 11

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
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Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, January 13, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#5.00 Original Disclosure Statement Describing Original 11 Plan

Docket 115

Tentative Ruling:

Tentative for 1/13/21:

The Disclosure Statement cannot be approved as written for the simple reason that it fails to meaningfully discuss the treatment of the \$1,335,000 of Claim #24, the Stelter claim. While the claim may be disputed it must be regarded as allowed until there is a formal determination otherwise. In practical terms, feasibility and other confirmation issues cannot be realistically evaluated without a discussion of how the claim will be met, or even if there will be an adversary proceeding, how would the reorganized debtor deal with a fully allowed claim if that should result.

Deny.

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, January 13, 2021

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#6.00 Objection to Claims Of RBS Citizens, N.A., Citizens Financial Group, Inc
(cont'd from 12-15-20 per order approvg stip. to cont. objection to claims
entered 12-01-20)

Docket 379

***** VACATED *** REASON: CONTINUED TO 2-24-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
HEARING ON DEBTOR'S OBJECTION TO CLAIMS OF RBS CITIZENS,
N.A. CITIZENS FINANCIAL GROUP, INC ENTERED 1-06-21**

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
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Thursday, January 14, 2021

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/1601672409>

ZoomGov meeting number: 160 167 2409

Password: 609286

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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**United States Bankruptcy Court
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Thursday, January 14, 2021

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**

Thursday, January 14, 2021

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 7-30-20)**
(cont'd from 10-29-20 per order on stip. to cont. the deadline for defendants to response to the trustee's first amended complaint & cont. s/c entered 10-06-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-25-21 AT 10:00 A.M.
PER ORDER ON STIPULATION TO ALLOW DEFENDANT'S UNTIL
MARCH 1, 2021 TO FILE A FIRST RESPONDING DOCUMENT AND TO
CONTINUE THE STATUS CONFERENCE CURRENTLY SET FOR
JANUARY 14TH, 2021 ENTERED 1-12-21**

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.

**United States Bankruptcy Court
Central District of California
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Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

CONT...

Deborah Jean Hughes

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.

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

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

CONT... Deborah Jean Hughes
Betty McCarthy

Pro Se

Chapter 7

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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

Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01131 OneSource Distributors, LLC v. Dang et al

**#2.00 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)
(cont'd from 12-03-20 per order approving stip. to cont. s/c entered
11-16-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-25-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
RESPOND TO THE COMPLAINT ENTERED 12-16-20**

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

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

Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

CONT... Hoan Dang

Chapter 7

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, January 14, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01133 Toll Bros, Inc. v. Dang et al

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(cont'd from 12-03-20 per order approving stip. to cont s/c entered
11-16-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-25-21 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 12-16-20**

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

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

Thursday, January 14, 2021

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, January 14, 2021

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

#4.00 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 6-25-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-26-21 AT 10:00 A.M. -
PER ORDER GRANTING STIPULATION TO CONTINUE PRETRIAL
HEARING ENTERED 1-13-21**

Tentative Ruling:

Tentative for 1/14/21:
Status? Appearance: required

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

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

Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

CONT... James G. Caringella

Chapter 13

Kathleen J. Caringella

Pro Se

Joint Debtor(s):

Kathleen J. Caringella

Represented By
Kelly H. Zinser

Plaintiff(s):

Michael Kaplan

Represented By
Adam M Greely

Field Time Target & Training LLC

Represented By
Adam M Greely

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Thursday, January 14, 2021

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

**#5.00 PRE-TRIAL CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(cont'd from 7-23-20)**

Docket 1

Tentative Ruling:

Tentative for 1/14/21:

Is this moot in light of the default judgment entered 12/1/2020?

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.

Tentative for 5/27/20:

Status?

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

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

Thursday, January 14, 2021

Hearing Room

5B

10:00 AM

CONT...

Igor Shabanets

Chapter 7

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.

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.

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

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

Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01066 Remares Global LLC v. Marshack et al

#6.00 PRE-TRIAL 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)
(cont'd from 7-23-20)**

Docket 5

Tentative Ruling:

Tentative for 1/14/21:

How long of a continuance is needed to document the settlement and provide any 9019 notice (if required)?

Appearance: required

Tentative for 7/23/20:

Same schedule as #9.

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

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

Thursday, January 14, 2021

Hearing Room 5B

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

Thursday, January 14, 2021

Hearing Room

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

#7.00 PRE-TRIAL CONFERENCE RE: Complaint for Declaratory Relief Regarding Validity, Extent and Priority of Judgment Lien as to 2 Monarch Cove, Dana Point, CA
(cont'd from 7-23-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
JOINT STIPULATION FOR DISMISSAL OF THE ENTIRE ACTION
ENTERED 1-12-21**

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

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

Thursday, January 14, 2021

Hearing Room

5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

Igor Shabanets

Pro Se

Rock Star Beverly Hills, LLC

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, January 14, 2021

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

#8.00 PRE-TRIAL 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 (cont'd from 7-23-20)

Docket 1

Tentative Ruling:

Tentative for 1/14/21:
Continue to February 11, 2021 @ 10 a.m.

Appearance: optional

Tentative for 7/23/20:
Same schedule as #9.

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

Richard A Marshack

Pro Se

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

Thursday, January 14, 2021

Hearing Room 5B

10:00 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

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

Thursday, January 14, 2021

Hearing Room 5A

10:00 AM

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

Chapter 7

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

**#9.00 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 10-29-20 per order on stip. to cont. pre-trial conf. entered 8-18-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER ON PLAINTIFF'S MOTION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 12-10-20**

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, January 14, 2021

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 14, 2021

Hearing Room 5B

10:00 AM

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

Chapter 7

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

**#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)]
(cont'd from 10-29-20 per order on stip. to cont. pre-trial conf. entered 8-18-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER ON PLAINTIFF'S MOTION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 12-10-20**

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, January 14, 2021

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, January 14, 2021

Hearing Room 5B

10:00 AM

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

Chapter 7

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

#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 10-29-20 per order on stip. to cont. pre-trial conf. entered 8-18-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER ON PLAINTIFF'S MOTION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 12-10-20**

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

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

Thursday, January 14, 2021

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Defendant(s):

Alan Gladstone

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 14, 2021

Hearing Room 5B

10:00 AM

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

Chapter 7

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

**#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 10-29-20 per order on stip. to cont. pre-trial ent. 8-18-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER ON PLAINTIFF'S MOTION TO CONTINUE PRE-TRIAL
CONFERENCE, DISCOVERY COMPLETION DEADLINE AND PRE-
TRIAL MOTION FILING DEADLINE ENTERED 12-10-20**

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, January 14, 2021

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, January 14, 2021

Hearing Room 5B

11:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

#13.00 Motion to Compel Further Responses to Request for Admission, and to Compel Further Production of Documents, as to Defendant, Scott Tucker; Request for Sanctions

Docket 10

*** VACATED *** REASON: CONTINUED TO 2-25-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PLAINTIFF'S
MOTION TO COMPEL FURTHER RESPONSES TO ADMISSION AND
PRODUCTION OF DOCUMENTS [ECF NO. 10] ENTERED 1-12-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott A. Tucker

Represented By
Thomas J Polis

Defendant(s):

Scott Tucker

Represented By
Thomas J Polis

Plaintiff(s):

Scott Churilla

Represented By
Stephanie N West

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 19, 2021

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/1605340133>

ZoomGov meeting number: 160 534 0133

Password: 005025

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, January 19, 2021

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, January 19, 2021

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, January 19, 2021

Hearing Room 5B

10:00 AM

8:20-13138 Herberth Castro and Lebeth A Gomez

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**SANTANDER CONSUMER USA INC.
Vs.
DEBTORS**

Docket 12

Tentative Ruling:

Tentative for 1/19/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Herberth Castro

Represented By
Michael H Colmenares

Joint Debtor(s):

Lebeth A Gomez

Represented By
Michael H Colmenares

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 19, 2021

Hearing Room 5B

10:00 AM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-05-21)**

**CREDIT UNION OF SOUTHERN CALIFORNIA
Vs
DEBTOR**

Docket 110

Tentative Ruling:

Tentative for 1/19/21:
Grant unless current post petition or APO stipulation.

Tentative for 1/5/21:
Grant unless current or APO stipulation. Appearance: optional

Party Information

Debtor(s):

Richard Ching-Koon Yee

Represented By
Christopher J Langley

Movant(s):

Credit Union of Southern California,

Represented By
Nichole Glowin
Arnold L Graff

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, January 19, 2021

Hearing Room 5B

10:00 AM

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

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(RE: 5510 Paseo Del Lago, Unit 2B, Laguna Woods, CA 92637)**

**THIRD LAGUNA HILLS MUTUAL
Vs
DEBTORS**

Docket 105

Tentative Ruling:

Tentative for 1/19/21:
Grant unless current or APO stipulation. No 362(d)(4) relief.
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):

Third Laguna Hills Mutual

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, January 19, 2021

Hearing Room 5B

10:00 AM

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

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY
(RE: 5175 Calzado, Laguna Woods, California 92637)

**THIRD LAGUNA HILLS MUTUAL
Vs
DEBTORS**

Docket 108

Tentative Ruling:

Tentative for 1/19/21:
Grant unless current post petition or APO stipulation. 362(d)(4) relief is not warranted. 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):

Third Laguna Hills Mutual

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, January 19, 2021

Hearing Room 5B

10:00 AM

8:20-10493 Terry Gonzalez

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-05-21)

WILMINGTON TRUST

Vs.

DEBTOR

Docket 69

Tentative Ruling:

Tentative for 1/19/21:
Grant. Appearance: optional

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, January 19, 2021

Hearing Room 5B

10:00 AM

8:20-12214 Javier Antonio Sosa

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-05-21)**

**MAMAD LLC
Vs
DEBTOR**

Docket 41

Tentative Ruling:

Tentative for 1/19/21:
Grant. Appearance: optional

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

Movant(s):

MAMAD, LLC

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, January 20, 2021

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.

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/1604419232>

ZoomGov meeting number: 160 441 9232

Password: 830706

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, January 20, 2021

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.
- 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, January 20, 2021

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 5B Calendar**

Wednesday, January 20, 2021

Hearing Room

5B

1:30 PM

8:20-12166 Stephen F. Sturm

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 12-16-20)**

Docket 2

Tentative Ruling:

Tentative for 1/20/21:

See #27. There remains a fundamental, unanswered question. Does Cook have a secured claim and do the promised payments equal that interest in present value terms. The parties should consider mediation to resolve this. Continue.

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

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

Wednesday, January 20, 2021

Hearing Room 5B

1:30 PM

CONT... Stephen F. Sturm

Chapter 13

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, January 20, 2021

Hearing Room

5B

1:30 PM

8:20-12214 Javier Antonio Sosa

Chapter 13

**#2.00 Confirmation Of Chapter 13 Plan
(cont'd from 12-16-20)**

Docket 10

Tentative Ruling:

Tentative for 1/20/21:

The points from last hearing have not been addressed. Absent the trustee's consent, or fix on the missing issues, deny.

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.

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

Wednesday, January 20, 2021

Hearing Room 5B

1:30 PM

CONT... Javier Antonio Sosa

Chapter 13

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, January 20, 2021

Hearing Room 5B

1:30 PM

8:20-12858 Raymond Hernandez and Myrna Hernandez

Chapter 13

#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 12-16-20)

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, January 20, 2021

Hearing Room 5B

1:30 PM

8:20-12929 Abel Gutierrez Gutierrez and Adelia Cruz De Gutierrez

Chapter 13

**#4.00 Confirmation Of Chapter 13 Plan
(cont'd from 12-16-20)**

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, January 20, 2021

Hearing Room 5B

1:30 PM

8:20-13047 Louis Erik Alter

Chapter 13

#5.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 1/20/21:

Is the Trustee satisfied with the explanation appearing in the reply to the effect that debtor has no true equitable interest and/or that an avoidance action would not be worth the candle in a 100% case?

Party Information

Debtor(s):

Louis Erik Alter

Represented By
Barry E Borowitz

Movant(s):

Louis Erik Alter

Represented By
Barry E Borowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 20, 2021

Hearing Room 5B

1:30 PM

8:20-13190 Michael Robert Yates

Chapter 13

#6.00 Confirmation of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 1/20/21:

The points raised by the Trustee and secured creditors must be addressed.

Party Information

Debtor(s):

Michael Robert Yates

Represented By
Raj T Wadhvani

Movant(s):

Michael Robert Yates

Represented By
Raj T Wadhvani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 20, 2021

Hearing Room 5B

1:30 PM

8:20-13191 Ronald Anthony Acevedo

Chapter 13

#7.00 Confirmation of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER DISMISSING CASE ENTERED 12-07-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Anthony Acevedo

Represented By
Joseph Arthur Roberts

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 20, 2021

Hearing Room 5B

1:30 PM

8:20-13216 April Joy Gonzales Alvarado

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER DISMISSING CASE ENTERED 12-16-20**

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, January 20, 2021

Hearing Room 5B

1:30 PM

8:20-13275 Lilia Cadiz Duelas

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE
SCHEDULES , STATEMENTS AND/OR PLAN ENTERED 12-15-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lilia Cadiz Duelas

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 20, 2021

Hearing Room 5B

3:00 PM

8:16-10859 Arthur Alvarez

Chapter 13

#10.00 Trustee's Motion to Dismiss Case

Docket 57

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 1-14-21

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:16-11398 Eric H Furlong

Chapter 13

**#11.00 Trustee's Motion To Dismiss Chapter 13 Case
(cont'd from 12-16-20)**

Docket 48

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 1/12/21**

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, January 20, 2021

Hearing Room 5B

3:00 PM

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

Chapter 13

#12.00 Trustee's Motion to Dismiss Case

Docket 112

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 1-06-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Michael Worrel

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Eunice Santos Worrel

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 20, 2021

Hearing Room 5B

3:00 PM

8:17-10207 Christyna Lynn Gray

Chapter 13

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

Docket 69

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 1-13-21**

Tentative Ruling:

- NONE LISTED -

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:17-14761 Richard Ching-Koon Yee

Chapter 13

**#14.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 12-16-20)**

Docket 100

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or modification on file.

Appearance: required

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, January 20, 2021

Hearing Room 5B

3:00 PM

CONT... Richard Ching-Koon Yee

Chapter 13

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

Wednesday, January 20, 2021

Hearing Room 5B

3:00 PM

8:18-11261 Rigoberto Martinez and Geena Martinez

Chapter 13

#15.00 Trustee's Motion To Dismiss Case

Docket 79

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 1/12/2021

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, January 20, 2021

Hearing Room

5B

3:00 PM

8:18-11637 Christopher Young Callahan and Kristine Nielsen Callahan

Chapter 13

**#16.00 Trustee's Verified Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 12-16-20)**

Docket 140

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current.

Appearance: required

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:18-14134 Lam Dang Nguyen

Chapter 13

**#17.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 12-16-20)**

Docket 35

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or a new modification motion on file.

Appearance: required

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:19-10049 Sunny Omidvar

Chapter 13

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

Docket 84

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or modification motion on file.
Appearance: required

Party Information

Debtor(s):

Sunny Omidvar

Represented By
Benjamin R Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 20, 2021

Hearing Room 5B

3:00 PM

8:19-10709 Ernest E Gonzales

Chapter 13

**#19.00 Trustee's Motion To Dismiss Case failure To Make Plan Payments.
(cont'd from 12-16-20)**

Docket 34

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or by deadline for coming current as set.

Appearance: required

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:19-11329 Charles Ryan Prince and Vicky Priscilla Preston

Chapter 13

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

Docket 43

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 1/12/2021

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Ryan Prince

Represented By
Barry E Borowitz

Joint Debtor(s):

Vicky Priscilla Preston

Represented By
Barry E Borowitz

Trustee(s):

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 20, 2021

Hearing Room

5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

**#21.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 12-16-21)**

Docket 69

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current. Appearance: required

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:19-12479 Judie Kay Brust

Chapter 13

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

Docket 33

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or modification motion on file.

Appearance: required

Party Information

Debtor(s):

Judie Kay Brust

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, January 20, 2021

Hearing Room 5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

**#23.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 12-16-20)**

Docket 68

Tentative Ruling:

Tentative for 1/20/21:
See #24

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, January 20, 2021

Hearing Room

5B

3:00 PM

8:19-13000 Dale Grabinski

Chapter 13

#24.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments
(cont'd from 12-16-20)

Docket 73

Tentative Ruling:

Tentative for 1/20/21:
Absent a persuasive response to the trustee, deny and dismiss.

Appearance: required

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:19-14502 Andy T. Torres

Chapter 13

**#25.00 Trustee's Verified Motion To Dismiss Case
(cont'd from 12-16-20)**

Docket 80

Tentative Ruling:

Tentative for 1/20/21:
Grant unless debtor converts.

Appearance: required

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:20-11803 Khalid Sayed Ibrahim

Chapter 13

#26.00 Trustee's Motion To Dsmis Case Failure To Make Plan Payments.

Docket 35

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or modification motion on file.

Appearance: required

Party Information

Debtor(s):

Khalid Sayed Ibrahim

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, January 20, 2021

Hearing Room 5B

3:00 PM

8:20-12166 Stephen F. Sturm

Chapter 13

#27.00 Motion to Value Stephen F. Sturms Interest in a Life Estate in Property Located at 2851 Rolling Hills Drive #114, Fullerton, CA.

Docket 36

Tentative Ruling:

Tentative for 1/20/21:

This is styled as a §506 motion to value the debtor's interest in the property commonly known as 2851 Rolling Hills Drive #114, Fullerton ("property"). It is brought under the caption of the main case rather than in the adversary proceeding also recently brought by debtor to determine nature, extent and value of liens. Creditor Cook responds under the adversary caption with what appears to be his answer (and apparently leaves it to the court to accept this as his response to the motion). To add to the confusion, debtor cites language from the trust instrument but does not provide actual copies of the governing documents. On the other hand, Cook does not seemingly dispute that the language is as quoted.

Despite this less than ideal procedural framework, a few things seem obvious. Debtor does not own the fee interest in the property, apparently. There is a question raised about a "wild deed" from debtor as successor trustee to himself. If the previous trustee had already died one wonders if this document could have any effect. Neither side analyzes the effect of this deed or whether if the debtor only ever held a life estate (but not the fee), if the trust deed has attached (or can attach?) to what is, effectively, a determinable life estate. Neither side gives the court any authority one way or the other. *Forrest v. Elam*, 88 Cal. App. 3d 167 (1979) is not as conclusive as debtor argues since it arose in a very different context. *Forrest* was a voluntary sale with the life tenant arguing for some of the proceeds out of a sale which had already occurred. *Forrest* did not explore the different angle presented here, i.e. the interest as collateral. Accepting the language quoted in debtor's papers as accurate, the value of the interest in the property as collateral must be low, maybe zero or nearly so, since it cannot effectively be sold as even a foreclosure cannot yield a title. The life estate terminates upon debtor's moving from the property (determinable) which would mean that foreclosure

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CONT...

Stephen F. Sturm

Chapter 13

is, in practical effect, worthless except that it may have some deterrent effect in ensuring that the payments stay current. This raises an interesting tangle under bankruptcy law. Debtor must stay current or lose the right to stay there (assuming the trust deed has attached to something, a point not yet established), and so the present value of promised payments under the plan must, when reduced to present value, equal the "allowed amount" of such secured claim under §1325(a)(5). The trick, of course, is a claim is only allowed as a "secured claim" to the extent of such creditor's interest in the estate's interest in such property...." under §506(a)(1). The papers do not address this question in any helpful way.

Absent more briefing the court is not disposed to value the creditor's interest as zero for the reasons stated. But it is obviously not a large number either. No real help is given the court to address the value of an ability to dispossess a tenant, or whether a trust deed can be perfected in a determinable life estate in the first instance.

Deny without prejudice to renewal if focused on the proper question(s) at hand. The parties should consider mediation.

Party Information

Debtor(s):

Stephen F. Sturm

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Judge Theodor C. Albert's Cases" on the Court's website at:
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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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Tentative Ruling:

- NONE LISTED -

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8:19-14802 Christi McGowan and Matthew McGowan

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**SANTANDER CONSUMER USA INC
Vs
DEBTORS**

Docket 35

Tentative Ruling:

Tentative for 1/26/21:
Grant. Appearance is optional.

Party Information

Debtor(s):

Christi McGowan

Represented By
Gary Polston

Joint Debtor(s):

Matthew McGowan

Represented By
Gary Polston

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-12-21)

**WELLS FARGO BANK N.A.
Vs
DEBTORS**

Docket 103

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY FILED 1-22-21**

Tentative Ruling:

Tentative for 1/12/21:
Grant. Appearance: optional

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., as Trustee,

Represented By
Christopher Giacinto
Darlene C Vigil
Julian T Cotton

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-10493 Terry Gonzalez

Chapter 13

#2.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-19-21)

**WILMINGTON TRUST
Vs.
DEBTOR**

Docket 69

Tentative Ruling:

Tentative for 1/26/21:
Grant unless current. Appearance: optional

Tentative for 1/19/21:
Grant. Appearance: optional

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-12214 Javier Antonio Sosa

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-12-21)**

**U.S. BANK N.A., SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A.
Vs
DEBTOR**

Docket 37

Tentative Ruling:

Tentative for 1/26/21:
Grant. Case was dismissed.

Tentative for 1/12/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

Movant(s):

U.S. Bank N.A., successor trustee to

Represented By
Robert P Zahradka

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-12214 Javier Antonio Sosa

Chapter 13

#3.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-19-21)

**MAMAD LLC
Vs
DEBTOR**

Docket 41

Tentative Ruling:

Tentative for 1/26/21:
Grant. Appearance: optional

Tentative for 1/19/21:
Grant. Appearance: optional

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Javier Antonio Sosa

Represented By
Lionel E Giron

Movant(s):

MAMAD, LLC

Represented By
Matthew D. Resnik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-12416 Michele Lynn Stover

Chapter 7

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

**ANA BIDOGLIO
Vs
DEBTOR**

Docket 33

Tentative Ruling:

Tentative for 1/26/21:

As the court understands it, there has already been an adjudication in state court and this motion is brought so that Ms. Bidoglio can appeal. The primary concern seems to be whether the claims are dischargeable. Debtor argues that an appeal will not help since the existing judgment is not specific enough to be collateral estoppel of any §523(a) issue in any event. While that may be true, the court is not comfortable simply accepting the debtor's characterization to conclude futility. There are also reportedly third parties involved and the stay may have some unexplained effect on her action against them. Consequently, so long as the issue is only one of finalizing and characterizing her claim, the stay will be lifted for the sole purpose of reaching such finality, no levies are permitted. Also, this does not obviate the need to file a timely dischargeability action although the parties may want to offer a standstill stipulation in order to minimize costs.

Grant. Appearance: optional

Party Information

Debtor(s):

Michele Lynn Stover

Represented By
Christopher J Langley

Movant(s):

Ana Bidoglio

Pro Se

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CONT... Michele Lynn Stover

Chapter 7

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:20-13476 Charles Aungkhin

Chapter 13

**#4.10 Motion in Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay As The Court Deems Appropriate
(OST Signed 1-20-21)**

Docket 21

Tentative Ruling:

Tentative for 1/26/21:
Opposition due at hearing. Appearance: required

Party Information

Debtor(s):

Charles Aungkhin

Represented By
Chris T Nguyen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-10762 Jack Richard Finnegan

Chapter 7

#5.00 United States Trustee's Fifth Motion For An Order Extending The Deadline For The United States Trustee And Chapter 7 Trustee To File Complaints Objecting To Discharge Under And Pursuant To 11 U.S.C. § 727 And FRBP 4004(B)(1)

Docket 311

Tentative Ruling:

Tentative for 1/26/21:

This is the UST and Chapter 7 Trustee Richard A. Marshack's ("Trustee") motion to extend the deadline to object to Debtor's discharge. Debtor filed a voluntary chapter 11 petition on 3/6/18. The Court ordered the UST to appoint a trustee on 5/24/18 and Richard Marshack was appointed on 5/25/18. The case was converted to Chapter 7 on 9/14/18. A financial conservator, Peter C. Kote ("Conservator"), was appointed by the Superior Court at Trustee's request on 12/3/19. The original deadline to object to Debtor's discharge under 11 U.S.C. § 727 was 12/24/18, but four extensions have been granted, with the last extension through 12/31/2020. To date, the Debtor has yet to appear for a Rule 2004 examination nor any 341(a) meetings of creditors since the appointment of the Chapter 11 Trustee.

"Rule 4004(b) provides that the deadline for objecting to discharge may be extended only for cause but does not elaborate regarding what might constitute such cause. A debtor's delays in responding to discovery may be enough cause. Obviously, a delay in the meeting of creditors to a date close to or after the deadline may constitute such cause." 9 Collier on Bankruptcy P 4004.03 (16th 2020). "The 'cause' determination is therefore left to the discretion of the bankruptcy court; it is fact-specific and must be made on a case-by-case basis." *In re Bomarito*, 448 B.R. at 247–48 (Bankr. E.D. Cal. 2011).

There appears to be no clear standard in the Ninth Circuit for what constitutes "cause" under Rule 4004(b). "At a minimum, 'cause' means excusable neglect." *Williams v. Sanderson*, 723 F.3d 1094, 1103 (9th Cir. 2013). But in the Eastern District of California, the *Bomarito* court relied on the following four factors: "(1) Whether the moving party had sufficient notice

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CONT... Jack Richard Finnegan

Chapter 7

of the deadline and information to file an objection; (2) the complexity of the case; (3) whether the moving party has exercised diligence; and (4) whether the debtor has been uncooperative or acted in bad faith." *In re Bomarito* at 249 (citing *In re Nowinski*, 291 B.R. 302 Bankr. SDNY 2003)).

When applying the Bomarito factors to the facts of this case, it seems that all four factors weigh heavily in favor of finding substantial cause for a deadline extension:

- (1) The UST and Trustee lacked the necessary information to file an objection because Debtor has been unresponsive to all inquiries and has failed to appear at any of the scheduled 341(a) meetings or FRBP Rule 2004 examinations.
- (2) This case has become increasingly more complex with the continued irrational behavior of Debtor and the recent court appointment of Conservator.
- (3) The UST and Trustee have demonstrated diligence and patience for nearly 3 years, in attempting to obtain necessary information from Debtor, conduct numerous 341(a) meetings and Rule 2004 examinations, and in requesting a Conservator to help facilitate the process.
- (4) Debtor's lack of cooperation is evidenced by his failure to appear to at least 23 scheduled 341(a) meetings; his disregard for this Court's FRBP Rule 2004 Examination Order; and his failure to respond to all of Conservator's communication attempts. While Debtor's actions are more likely due to his age and mental state rather than intentional acts of bad faith, his actions constitute a severe lack of cooperation, nonetheless.

Debtor's Opposition lacks any basis in fact and raises only claims that have been previously raised and dismissed. Debtor's claims regarding this Court's lack of jurisdiction, Judge Albert's disqualification, the unlawful appointment of Trustee, and the unlawful conversion from Chapter 11 to Chapter 7 are patently false or incorrect, as evidenced by corresponding documents in the case docket. (See docket #s 85, 151, 173, 195, and 272). Additionally, Debtor's claim that a case cannot proceed during a pending Disqualification Motion (under GO 224(4)) is wrong, because Debtor is referring to an old version of the General Order that was superseded by GO

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CONT... Jack Richard Finnegan

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05-06 on 6/27/05, which does not contain the old provision that Debtor cites. Lastly, the provisions under 11 U.S.C. § 105(d)(2)(B) that Debtor claims were not met by this Court are not required provisions, but “may” be issued at the court’s discretion.

Therefore, cause exists for this deadline extension due to Debtor’s continued lack of cooperation and failure to raise any relevant objections. Considering the time needed to schedule and conduct a formal FRBP Rule 2004 examination under current COVID restrictions, as well as the time needed to draft and file an objection to discharge should Debtor fail to comply, an extension through 7/31/2021 is reasonable. If not already obvious based on orders already entered, the UST or the appointed Trustee may wish to obtain an order specifically compelling cooperation at Rule 2004 examination, or appearance at §341(a) meeting, or any or all of the other requirements already mentioned. At the very least this should make short work of any question about discharge under §727(a)(6).

The court would appreciate a joint status report from the appointed Trustee and from the Conservator within 60 days. Where are we going and what is the approximate timetable?

Grant.

Party Information

Debtor(s):

Jack Richard Finnegan

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Laila Masud

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8:20-11350 Jae Kook Jun and Jee Hee Jun

Chapter 7

**#6.00 Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property)
(cont'd from 12-08-20 per order approving stip. to cont. hearing on mtn to avoid lien entered 12-07-20)**

Docket 12

Tentative Ruling:

Tentative for 1/26/21:
Nothing new has been filed. Status?

See below for the court's previously unposted tentative ruling in anticipation of the hearing on December 8, 2020, which was vacated by stipulation:

Tentative for 12/8/20:

The court now has two competing appraisals, one at \$665k and the Bank's at \$725k figured as of the petition date. The difference creates the possibility that the lien will have attached to some significant value north of the \$100k exemption. Even the debtor's value would yield about \$10k of attachable value, considering the first lien of \$554k. No analysis is given as to which appraisal is closer or how the court is to resolve the dilemma. Absent that the court is inclined to schedule an evidentiary hearing at which time the appraisers will each testify subject to cross examination, and following the court will make a §506 determination. Of particular importance is an analysis of why the opposing appraisal is wrong. Continue approximately thirty days.

Party Information

Debtor(s):

Jae Kook Jun

Represented By
Andrew S Cho

Joint Debtor(s):

Jee Hee Jun

Represented By
Andrew S Cho

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CONT... Jae Kook Jun and Jee Hee Jun

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Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:09-22699 Cheri Fu

Chapter 7

#7.00 Petitioning Creditor Bank Of America, N.A.'s Application for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. Section 503(b)(3)(A) and 503(b)(4)
(cont'd from 9-22-20 per order approving stipulation entered 7-30-20)

Docket 383

Tentative Ruling:

Tentative for 1/26/21:

No opposition has been filed in approximately the nine years this matter has been pending. The court notes there is a subordination arrangement with the Chapter 7 trustee. Allow as prayed subject to the subordination. The court would appreciate an updated status on this case from the Chapter 7 trustee.

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

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

Chapter 7

#8.00 Objection Of Chapter 7 Trustee To Claims Of Noble Americas Energy Solutions
[Claim Nos. 581, 1419, 1426 and 1452]

Docket 2921

***** VACATED *** REASON: CONTINUED TO 2-23-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON OBJECTION OF CHAPTER 7 TRUSTEE TO CLAIMS OF NOBLE
AMERICAS ENERGY SOLUTIONS ENTERED 1-25-21.**

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

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman
Todd C. Ringstad

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Brett Ramsaur
Richard C Donahoo
Andrew Still

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<https://cacb.zoomgov.com/j/1603445373>

ZoomGov meeting number: 160 344 5373

Password: 504406

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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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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Tentative Ruling:

- NONE LISTED -

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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)

Docket 179

Tentative Ruling:

Tentative for 1/27/21:

There was motion conditionally granting dismissal entered on September 30, 2020 (See Docket #175). This followed a reported sale of the principal asset free of liens for a price of \$4.040,000. A declaration regarding disbursements was filed on Jan. 25 by debtor's counsel. The court would request a report on status before dismissal (or conversion) is considered. In view of this failure to file MORs although not excusable is of lesser importance.

Conditionally deny. Appearance: required

Party Information

Debtor(s):

2045 E Highland, LLC

Represented By
Thomas B Ure
George C Lazar

Movant(s):

United States Trustee (SA)

Represented By
Michael J Hauser

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8:20-10269 Rafik Youssef Kamell

Chapter 11

#2.00 Debtor's Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization Dated November 2, 2020

Docket 106

Tentative Ruling:

Tentative for 1/27/21:

Debtor's reply indicates an intent to amend the DS consistent with several of the points made in the objections, and particularly, the U.S. Trustee and IRS objections. However, Debtor asks the court to approve the DS with the proposed amendments before actually reviewing them, which is premature given the size and seriousness of the alleged discrepancies. The court requires a hearing on the amended DS to ensure that the proposed amendments cure the defects and shortcomings acknowledged by Debtor and enable the interested parties to conduct their own review. On the bright side, it does not seem that the necessary amendments to the DS will be especially cumbersome, and thus, should not require a considerable continuance period. Debtor appears correct that many of the SIF issues raised are confirmation issues, not disclosure adequacy issues. For example, SIF asserts that the DS does not adequately describe its remedies should the Debtor default under the plan. Debtor persuasively argues that what SIF is really asserting is that the plan is not fair and equitable to them, which is a confirmation issue under §1129(b)(2)(A). In any case, Debtor asserts that SIF will retain the lien securing its claim and receive deferred cash payments having a present value of at least the value of its Allowed Claim and equal to the value of its collateral as of the Effective Date. SIF also raises concerns that the DS does not offer a way for Debtor to pay the balloon payment due in fifteen years. Again, Debtor points out that such income projections are included in the current DS and asserts that this objection is appropriately understood as a confirmation issue because it raises questions of feasibility, not adequate disclosure. While this is true in the abstract, if a confirmation issue is too large or profound, it may also go to the question of whether the additional resources for amendment of a disclosure on a patently unconfirmable plan are prudent. In this category is the question of how debtor intends to amortize a priority claim of the size claimed by IRS in the few

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CONT... Rafik Youssef Kamell

Chapter 11

remaining months available under the maximum amortization period permitted under §1129(a)(9). The court notes that much of the claim is comprised of estimated taxes, but this threshold issue should be addressed.

Although SIF, an over-secured creditor, points to numerous alleged deficiencies in the DS, none of them appear to be obviously fatal. Debtor will be amending the DS and would be well-advised to take some of SIF's objections seriously by including more direct answers in the amended DS, particularly around the issue of feasibility. Debtor may be correct that many of SIF's objections are confirmation issues, but what harm is there in addressing at least some of them now, particularly on some of the more serious feasibility questions?

As Debtor will be amending the DS as noted above to address both the U.S. Trustee's and IRS's objections, the hearing will be continued to allow Debtor time to make such amendments as appear necessary and allow all interested parties time to review the amended DS. Debtor is advised to address the feasibility questions raised by SIF (and as to the IRS priority claim) as confirmation of the plan will almost certainly be challenged on that ground.

Also, the Declaration of IRS agent Johnson is disturbing. The Debtor cannot expect to obtain an approval of disclosure, or even to remain in Chapter 11, without displaying suitable cooperation with the IRS whose very large claim represents a major impediment. Moreover, this is no longer a young case and non-cooperation at this critical juncture can call good faith in general into question.

Continue. Appearance: required

Party Information

Debtor(s):

Rafik Youssef Kamell

Represented By
Robert P Goe

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8:21-10017 DGWB Ventures, LLC

Chapter 11

**#3.00 Motion For Entry Of An Order Authorizing Debtor To Use Cash Collateral On An Interim Basis Pending A Final Hearing
(OST Signed 1-20-21)**

Docket 12

Tentative Ruling:

Tentative for 1/27/21:
Opposition, if any, due at hearing.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#4.00 Motion For Entry Of An Order Authorizing Debtor To Provide Adequate Assurance Of Future Payment To Utility Companies Pursuant To Section 366(c) Of The Bankruptcy Code
(OST Signed 1-20-21)

Docket 13

Tentative Ruling:

Tentative for 1/27/21:

Grant absent opposition which is due at the hearing.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

**#5.00 Motion For Entry Of An Order Authorizing, But Not Directing, Debtor To Pay
Prepetition Claims Of Critical Vendors
(OST Signed 1-20-21)**

Docket 14

Tentative Ruling:

Tentative for 1/27/21:
Grant subject to opposition due at hearing.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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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/1603347041>

ZoomGov meeting number: 160 334 7041

Password: 228544

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

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01093 Romex Textiles, Inc. v. Kim

**#1.00 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 12-03-20)**

Docket 1

Tentative Ruling:

Tentative for 1/28/21:
Status on entry of default? Appearance: optional

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

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CONT... Katie Ki Sook Kim

Chapter 7

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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Hearing Room 5B

10:00 AM

8:19-12736 Christina Stolze Lopez

Chapter 7

Adv#: 8:20-01114 Kosmala v. Lopez

#2.00 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)
(cont'd from 10-29-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 1-14-21**

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

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CONT... Christina Stolze Lopez

Chapter 7

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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10:00 AM

8:20-11327 Heather Huong Ngoc Luu

Chapter 7

Adv#: 8:20-01117 E-Z Housing Group LLC v. Luu

#3.00 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 12-10-20)

Docket 1

Tentative Ruling:

Tentative for 1/28/21:

Status on filing of motion supporting default judgment? Appearance: optional

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

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Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01155 Marshack v. Saiya Holdings, LLC

#4.00 STATUS CONFERENCE RE: Complaint For: 1) Avoidance of Unauthorized Post-Petition Transfer; 2) Recovery of Avoided Transfer; 3) Turnover of Property of the Estate; 4) Declaratory Relief; 5) Quiet Title; and 6) Injunctive Relief
Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(14 (Recovery of money/property - other)),(72 (Injunctive relief - other)) (

Docket 1

Tentative Ruling:

Tentative for 1/28/21:
Deadline for completing discovery: July 1, 2021
Last date for filing pre-trial motions: July 23, 2021
Pre-trial conference on: August 26, 2021
Joint pre-trial order due per local rules.

Appearance: required

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Saiya Holdings, LLC

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

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Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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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 12-03-20)

Docket 1

Tentative Ruling:

Tentative for 1/28/21:

That both sides' signature appear on a Joint Pre Trial Stipulation and Order is progress. The court would ask that the parties confer so as to decide whether exhibits can be accepted into evidence without dispute, particularly the list of deposits into and payments from the various accounts. If so what will otherwise become an exceedingly tedious trial can be greatly shortened. Of course, both sides would remain free to dispute the significance of the deposits or checks. Depending on resolution of these questions look to schedule trial about mid-summer.

Appearance required.

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

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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 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

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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 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

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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 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

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Tara Jakubaitis
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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CONT... Tara Jakubaitis

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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

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Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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10:00 AM

8:18-10969 Luminance Recovery Center, LLC

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

#6.00 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 12-03-20 per order approving stip. to extend dates in modified scheduling order entered 11-20-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-01-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO EXTEND DATES IN MODIFIED SCHEDULING ORDER ENTERED 12-18-20**

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

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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

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David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw

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8:10-26382 Fariborz Wosoughkia

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Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#7.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Based On Fraud And Objecting To Discharge Of Debtors (cont'd from 12-03-20 per order re: stip. to cont. pre-trial conf. entered 12-01-20)

Docket 1

Tentative Ruling:

Tentative for 1/28/21:

All the deadlines have passed but no significant status report has been received despite several continuances. Status?

Appearance: required

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

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Central District of California
Santa Ana
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10:00 AM

CONT... **Fariborz Wosoughkia** **Chapter 7**
Joint Pre-trial order due per LBRs.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within
10 days.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

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

Thursday, January 28, 2021

Hearing Room

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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 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 12-03-20 per order appr. stip. to con't ent.11-25-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-25-21 AT 10:00 A.M.
PER ORDER APPROVING THE STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 1-27-21**

Tentative Ruling:

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
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Santa Ana
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Thursday, January 28, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01089 Marshack v. Supreme Oil Company

**#9.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims
(set from s/c hrg held on 8-06-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-01-21 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUED THE PRE-
TRIAL CONFERENCE ENRTERED 1-14-21**

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

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CONT...

i.i. Fuels, Inc.

Robert P Goe

Chapter 7

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Hearing Room 5B

10:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

#10.00 PRE-TRIAL 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) (set from s/c hrg held on 8-13-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-08-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE ENTERED 1-12-21**

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

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

8:13-19732 Steven William Gentile

Chapter 11

#11.00 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)
(cont'd from 12-17-20 per order approving stip. to cont. p/t conf. hrg. entered 12-14-20)

Docket 0

*** VACATED *** REASON: CONTINUED TO 2-25-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
HEARING ENTERED 1-26-21

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
Judge Theodor Albert, Presiding
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Thursday, January 28, 2021

Hearing Room 5B

10:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

Adv#: 8:19-01047 Golden v. Easton & Easton, LLP et al

**#12.00 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 10-29-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION TO DISMISS REMAINING CLAIMS IN ADVERSARY
PROCEEDING ENTERED 1-05-21**

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.

Please be advised that CourtCall has announced reduced 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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10:00 AM

CONT... Nezamiddin Farmanfarmaian

Chapter 7

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
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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
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CONT... Nezamiddin Farmanfarmaian

Chapter 7

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Thursday, January 28, 2021

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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

#13.00 PRE-TRIAL 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) **(set from s/c hrg held on 2-27-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO FEBRUARY 25, 2021 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO MODIFY SCHEDULING ORDER ENTERED 11/20/2021**

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

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Santa Ana
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CONT... Harv Wyman
BOMOR ENTERPRISES, LLC

Pro Se

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

**United States Bankruptcy Court
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Santa Ana
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Thursday, January 28, 2021

Hearing Room 5B

11:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

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

**#14.00 Defendant's Motion For Judgment On The Pleadings Pursuant To FRCP 12(C)
(cont'd from 1-7-21 per order continuing hrg re: defendant's mtn for
judgment on the pleading entered 12-23-20)**

Docket 243

Tentative Ruling:

Tentative for 1/28/21:

This is Defendant and Debtor, Tara Jakubaitis' ("Defendant" or "Debtor") Fed. R. Civ. P. 12(c) motion for judgment on the pleadings. The motion is opposed by the chapter 7 trustee, Richard Marshack ("Trustee" or "Plaintiff").

Plaintiff's first amended complaint was filed on May 13, 2016, and to the court's knowledge, has not been amended since. The first amended complaint sought the following relief:

1. Turnover of estate property, including cash, bank accounts, vehicles (namely a Corvette), and a United States Patent pursuant to 11 U.S.C. §542.

2. Revocation of discharge for alleged intentional failure to report their interest in several assets including bank accounts, vehicles, and a United States Patent pursuant to 11 U.S.C. §727(d)(1).

3. Revocation of discharge pursuant to 11 U.S.C. §727(d)(2) for failure to disclose and turnover the Bui judgment obtained post-petition by Frank Jakubaitis.

This latest motion is brought by Defendant on the grounds that significant events have transpired and coalesced since the last time the court heard a dispositive motion in this case. In particular, they allegedly are: (1) dismissal of Plaintiff's turnover cause of action; (2) this court's granting dismissal of Mr. Jakubaitis from this adversary proceeding due to lack of

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CONT... Tara Jakubaitis

Chapter 7

subject matter jurisdiction; (3) the finding that the Bui judgment was void; (4) the evidence suggesting that neither Debtor nor Frank ever owned a patent; (5) the concession that the Corvette once asserted to be property of the estate, in fact, did not exist; and (6) the Trustee's filing of a no asset report in 2017 that remains operative to this day. Furthermore, although previous attempts from several years ago raising the statute of limitations (or of repose) found in 11 U.S.C. §727(e) as a dispositive issue in a 12(b)(6) context have failed, Defendant asserts that the current record clearly demonstrates the righteousness of her position. It is worth noting that, as far as the court is aware, and Plaintiff appears to confirm in his opposition, the complaint has not been amended since the first amended complaint was filed in May of 2016.

A motion for judgment on the pleadings may be granted only if, taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). For purposes of a Rule 12(c) motion, the allegations of the non-moving party are accepted as true and construed in the light most favorable to the non-moving party, and the allegations of the moving party are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); *Fleming* at 925. In some ways this motion is more properly brought under Rule 56 as it relies in part on evidence and points extraneous to the pleadings. To the extent that is true the court will construe this as a motion for summary judgment. Using this standard, the points raised below are considered.

1. Timeliness of the Motion

As a preliminary matter, Plaintiff asserts that this motion is untimely because it was filed after the last date to file pre-trial motions as set by this court's scheduling order. According to this court's scheduling order, the last day to file pre-trial motions was December 15, 2019, and this motion was not filed until December 2, 2020. Plaintiff filed an *ex parte* application on December 23, 2020 requesting one of two forms of relief: (1) strike the motion

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CONT... Tara Jakubaitis

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as untimely pursuant to the scheduling order; or (2) continue the hearing on this motion to January 28, 2021. The court granted the latter. Defendant argues that the court's election implies the court's intent to hear the motion on its merits instead of upon a procedural issue. Indeed, the order continuing the hearing on this motion specifically crossed out the portion discussing denial of the motion as untimely. But Defendant reads way too much into this. The court merely chose to consider the issue in the wider context, to include the procedural question. As the court has the inherent power under 11 U.S.C. § 105(a) to manage its own dockets, including issuing new orders that supersede older orders, this motion is considered even if not timely. Mainly the court wants to consider what may be a fundamental problem with this case at its very heart which does not go away merely because the Defendant was late in raising it. Also, Defendant is correct that the once larger array of supposed assets has dwindled significantly which may then justify a closer look at the remaining statute of repose question.

2. Dismissal of Plaintiff's Turnover Cause of Action Under 11 U.S.C. §542

This court dismissed this cause of action by order issued March 13, 2020. The court did so because of its expressed skepticism that a promissory note on a loan to an entity owned and controlled by Debtor and Frank was properly subject to turnover. The court instead suggested that the proper remedy was a claim for damages. This same order also categorically dismissed Frank Jakubaitis from this adversary proceeding.

3. The Bui Judgment

Plaintiff previously asserted that that the so-called Bui judgment, which Frank Jakubaitis apparently obtained in May of 2015, was fraudulently concealed and is grounds for revocation of discharge under §727(d)(2). However, this issue became largely moot in March of 2017 when the Bui judgment was voided and became worthless. See Defendant's Request for Judicial Notice, Ex. 6. Defendant cites *Sole Energy Co. v. Hodges*, 128

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Cal.App.4th 199, 210 (2005) for the proposition that a void judgment cannot be used as the basis of any right whatsoever. Indeed, the *Hodges* court observed, "A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone."

It could be argued that §727(d) is not concerned about the value of a given asset, rather it is concerned with deterring debtors from fraudulently concealing assets of the estate, but that argument is not raised in connection with the Bui judgment. In any case, Defendant argues somewhat convincingly that the Bui judgment, worthless or not, would have part of *Frank's* bankruptcy estate, as it was his judgment, not Defendant's. Additionally, the court is mindful of the purpose of the §727(d) sanction, that is, to motivate debtors to be forthright and fulsome in their disclosure on their schedules and to their trustees on pain of losing their discharge. This implies that the assets to be disclosed must have at least some inherent value, as no schedule is so complete as to mention every single worthless piece of junk or hypothetical right or claim which, as it developed in this case, fits the definition of the Bui judgment. Certainly, denial of a discharge based on a wife's failure to disclose her husband's worthless judgment against a third person, which then later goes away as improperly obtained in the first place, rests on a very infirm foundation. Plaintiff's opposition appears to back off on his pursuit of the Bui judgment, which lends additional support to the mootness argument.

4. The Corvette

Plaintiff also alleged that either Defendant, or possibly Frank, was concealing a Corvette from the Trustee. An insurance form concerning a Corvette held in the name of Frank Jakubaitis was used as evidence. However, a transcript of a September 5, 2019 hearing on a motion for default judgment in Frank's adversary proceeding shows that after investigating the insurance lead, Mr. Shirdel, counsel for the plaintiff, Carlos Padilla, III, conceded that Frank never owned the Corvette in question. See Defendant's Request for Judicial Notice, Ex. 7. Mr. Shirdel is also counsel for Trustee in

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this adversary proceeding.

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5. The Patent

The last tangible asset believed by Plaintiff to have been fraudulently concealed was a U.S. Patent. Plaintiff's investigation appears to have been spurred by the existence of a Patent Application. However, the patent application shows that the application was abandoned for failure to respond to an office action in 2007. See Defendant's Request for Judicial Notice, Ex. 5. To the court's knowledge, Plaintiff has not come forward with any additional evidence suggesting the patent ever issued.

6. Cash Accounts

Plaintiff's first amended complaint references concealed cash accounts, but the complaint is extremely light on specifics. Somewhat surprisingly, Plaintiff's opposition to this motion is much more specific in that it includes the names of the various entities allegedly involved, and approximate amounts of monies allegedly received and/or concealed by Defendant. In any case, as Defendant points out, much of the alleged wrongdoing was done through Wecosign, Inc., a corporation owned by the debtors, which filed its own bankruptcy petition in 2014. Thus, it is likely that assets transferred to or through that entity would be property of the estate of Wecosign, Inc., not Defendant's estate. That has large significance in the court's reading of §727(d), as discussed below.

7. The No Asset Report(s)

Defendant points out that Plaintiff filed a no asset report on March 30, 2017. The report states the trustee has abandoned assets, determined exempt assets, and shows the scheduled claims subject to discharge. In opposing this motion, Plaintiff urges the court to disregard the no asset report as being of only limited relevance. However, although inconvenient for

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Plaintiff, it does seem particularly relevant that Plaintiff, despite all these allegations of concealed assets, has not withdrawn his nearly 4-year-old no asset report. Certainly, an experienced trustee such as Plaintiff would know that is an option available to him. Thus, the court finds the operative status of the no asset report not only relevant, but rather telling. Maybe even more telling is the fact that Mr. Casey, the trustee in the Wecosign estate also has failed to withdraw his no asset report as well.

8. Plaintiff's Claims Are Likely Time-Barred

Defendant has maintained for some time now that the complaint in this adversary proceeding is untimely as the statute in question, §727 has some rather rigid and unforgiving deadlines.

Under 11 U.S.C. §727(e):

"The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed."

Here, it appears that nearly all of the allegations in the first amended complaint, including the false oaths, concealment of the Corvette and the U.S. Patent, would fall under §727(d)(1), which covers situations in which a discharge is "obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge[.]" Assets of the estate existing before the petition, but not disclosed, would seemingly fit the §727(d)(1) definition, and from what the court can discern, would encompass all of the above assets with the possible exception of the cash accounts and Bui judgment. As noted above, this section has a 1-year

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period to bring an action from the time of discharge. Defendant received her discharge on August 11, 2014. The complaint initiating this adversary proceeding was not filed until October 28, 2015, which is well outside the 1-year statute of limitations. It could be argued that there is a case for equitable tolling of the otherwise strict time limits imposed by §727(e). Although many statutes of limitations provide for equitable tolling, courts in the Ninth Circuit and beyond, including secondary sources such as Collier on Bankruptcy have opined that equitable tolling does not apply to §727(d)(1) claims. See *Towers v. Boyd (In re Boyd)*, 243 B.R. 756, 764-65 (N.D. Cal. 2000) ("Case law and treatises almost unanimously favor reading sections 727(d)(1) and (e)(1) as prohibitive of equitable tolling.") These authorities construe §727(e) as a statute of repose, i.e. one providing inalterable relief from action irrespective of future events. See *Apex Wholesale Inc. v. Blanchard (In re Blanchard)*, 241 B.R. 461, 464 (Bankr. S.D. Cal. 1999) ("Section 727(e)(2) is a statute of repose and, as such, is not subject to the doctrine of equitable tolling."). The court is aware of a concurring opinion in *Weil v. Elliott*, 859 F.3d 812, 815 (9th Cir. 2017) where Judge Christen opined that §727(e)(1) is a statute of limitations, and not a statute of repose. However, as discussed above, whether §727(e) is a statute of limitations or a statute of repose will likely make little difference in this particular case.

However, causes of action brought under §727(d)(2) have more forgiving deadlines under §727(e). Under §727(d)(2), a revocation action may be brought if "the debtor acquired property that is *property of the estate*, or became entitled to acquire property that would be *property of the estate*, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee[.]" (italics added) If applicable this provision would save the present action as the case is not yet closed.

From the face of the complaint, it is not obvious what specific property would fall under §727(d)(2) other than the Bui Judgment, which is named as such in the first amended complaint. However, as noted, the Bui judgment was subsequently voided. After the dismissal of the §542 claims against Defendant, the admission that the Corvette never existed, the evidence that the U.S. Patent was never more than just an abandoned application, and the

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voided Bui Judgment, what else is left? One could surmise that the bank accounts set up and monies received through the various corporate entities controlled by Defendant and her husband were concealed, but as discussed above, the main entity involved in those allegedly fraudulent transactions, Wecosign, Inc., has its own bankruptcy estate. In any case, it appears from the complaint that most, if not all the money Defendant directly received through those transactions would have been received pre-petition, making it likely to fall under §727(d)(1). Thus, it is not clear what, if anything, is left upon which Plaintiff's revocation action might attach.

That said, the court is unclear about the role of the other related entities such as Wecosign Services, Inc. and PNC National, Inc. But from what the first amended complaint suggests, those companies were operated essentially in the same manner as Wecosign, Inc., which is to say, primarily for the personal benefit of Defendant and Frank. What gives the court some pause here, is the lack of a clear timeline (at least not clear from the first amended complaint). It would appear that the alleged misconduct involving these other entities also occurred mostly, if not entirely pre-petition. Plaintiff's opposition does refer to the sum of \$113,000 allegedly transferred from Wecosign Services, Inc. to Defendant both shortly before and shortly after filing her petition. It seems payments making up this sum were made in separate installments. The way this is presented in the opposition uses language that tries to shoehorn it into §727(d)(2). The court is, of course, obliged to look at the alleged facts in the light most favorable to Plaintiff as the non-moving party. However, the court notes that these allegations are not actually in the first amended complaint and it is unknown when Plaintiff became of aware of these alleged transactions. One supposes it must have been after the filing of the no asset report in 2017. But then, again, why was the no asset report not withdrawn? In any case, the court is willing to hear argument on this point.

9. Property of Which Estate?

But a more fundamental problem arises. If the timing on the cash account withdrawals is all or at least partly *post-petition*, in an apparent effort

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Chapter 7

to fit within §727(d)(2)'s more flexible statute of repose provided in §727(e)(2), one must ask what is meant by the language italicized above, "property of the estate...?" The most likely reading of this language would mean property of the debtor's estate because that is the property the trustee appointed in the debtor's case is authorized to administer. Also, it is possible for a debtor to engage in the proscribed conduct in a separate bankruptcy case, but still obtain a discharge in their own case honestly, and thus, trigger neither subsection (d)(1) nor (d)(2). This view is shared by other courts as well. "It would be a very strained reading of [§727(d)(2)] to conclude that it meant any bankruptcy estate, and not just the debtor's own." *Thompson v. Thompson*, 561 B.R. 581, 596-97 (Bankr. N.D. Ga. 2016) citing *All Points Capital Corp. v. Stancil (In re Stancil)*, 2012 WL 4116505, at *2 (Bankr. E.D.N.C. Sept. 18, 2012) ("Because the debtor did not engage in post-petition conduct in connection with his own individual chapter 7 case prohibited by § 727(d)(2), the court cannot revoke his discharge.").

But it seems the cash accounts from the Wecosign, Inc. were from another estate, which Mr. Marshack would not in any event have been authorized to administer even if they had been revealed. Plaintiff might have saved his case had he alleged that Wecosign, Inc., and the other related entities, were the alter ego of the debtor(s). To be logically consistent, plaintiff would need to prove that the corporation had no separate existence, such that its monies are in equity the individual's property, and, as a result, that it should be turned over as "property of the estate." That seems a stretch here. For example, could not the alleged behavior amount to corporate malfeasance without equating to an obliteration of the corporation under an alter ego theory? To be clear, in the court's view, the first amended complaint appears to allege facts on the outskirts of an alter ego theory but does not include certain necessary allegations as described above. If such allegations can, in good faith, be made, then one is obliged to wonder, why has the complaint not been amended since 2016? Despite some skepticism, the court is still willing to hear argument on this point.

10. Conclusion

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

Thursday, January 28, 2021

Hearing Room 5B

11:00 AM

CONT... Tara Jakubaitis

Chapter 7

In sum, Plaintiff's opposition raises more questions than it answers, which is to say, is of little help in resolving anything. By contrast, Defendant's motion appears to provide several answers to lingering questions about this case, and unlike the opposition, is supported by documentation in the record of this case or related cases. Where Defendant has submitted extrinsic evidence in support of the motion, the court notes that Plaintiff has either tacitly admitted the authenticity and accuracy of such evidence or has simply failed to challenge the same. In any case, the court is comfortable allowing such evidence to augment the record. In doing so, this motion might be more akin to a motion for summary judgment under Rule 56. See *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996) ("Because the district court has in this case considered evidence outside the pleadings, we treat Brown's motion as one for summary judgment. See Fed. R. Civ. P. 12(c).")

The amount of time this adversary proceeding has gone on is also relevant. Defendant received her discharge more than six years ago. The complaint initiating this adversary proceeding was filed more than 5 years ago. The Plaintiff's 'no asset report' remains operative nearly four years after it was filed. The court has indulged Plaintiff's doggedly determined efforts to root out assets that may exist, but at some point, the plug must be pulled, especially when those efforts have turned up more rocks and no gold.

To conclude, the bulk of the causes of action in the first amended complaint appear to be time-barred by the rigidity of §727(e), and it is not obvious that the remaining causes of action, even those that can be charitably gleaned from the opposition to this motion, fit within the more flexible §727(d)(2) and its comparatively generous statute of limitations. Furthermore, Defendant has produced evidence, unchallenged by Plaintiff, that indicates that the key identifiable tangible assets were either worthless or non-existent, and what might have been relevant probably belonged to another estate under the administration of another trustee.

Grant

Party Information

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

Thursday, January 28, 2021

Hearing Room 5B

11:00 AM

CONT... Tara Jakubaitis

Chapter 7

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker
Fritz J Firman
Benjamin R Heston

Defendant(s):

Tara Jakubaitis

Represented By
Fritz J Firman

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By
Arash Shirdel

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

Thursday, January 28, 2021

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 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
(cont'd from 12-03-20 per order apprvng stip. to cont. mtn to dismiss and status conference entered 10-22-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-25-2021 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION RE: RESCHEDULING
DEFENDANTS' MOTION TO DISMISS AND (2) STATUS CONFERENCE
ENTERED 1-25-2021.**

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, January 28, 2021

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

#16.00 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
(cont'd from 11-12-20 per order apprvng stip. to cont. mtn to dsm & status conference entered 10-22-20)

Docket 9

***** VACATED *** REASON: CONTINUED TO 2-25-2021 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION RE: RESCHEDULING
DEFENDANTS' MOTION TO DISMISS AND (2) STATUS CONFERENCE
ENTERED 1-25-2021.**

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, February 2, 2021

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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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/1610691166>

ZoomGov meeting number: 161 069 1166

Password: 952823

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, February 2, 2021

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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- 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, February 2, 2021

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, February 2, 2021

Hearing Room 5B

10:30 AM

8:21-10004 John Andrew Zubko

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

PETER CHAPMAN, AS TRUSTEE OF THE CHAPMAN FAMILY TRUST
DATED MAY 28TH, 2003, AND PETER CHAPMAN, AS TRUSTEE OF THE
MET-COM REALTY CORP PROFIT SHARING PLAN
Vs
DEBTOR

Docket 7

Tentative Ruling:

Tentative for 2/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

John Andrew Zubko Pro Se

Movant(s):

Peter Chapman, as Trustee of the Represented By
Michael M Wintringer

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 2, 2021

Hearing Room 5B

10:30 AM

8:20-10493 Terry Gonzalez

Chapter 13

#1.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-26-21)

**WILMINGTON TRUST
Vs.
DEBTOR**

Docket 69

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
AUTOMATIC STAY ENTERED 1-28-21**

Tentative Ruling:

Tentative for 1/26/21:
Grant unless current. Appearance: optional

Tentative for 1/19/21:
Grant. Appearance: optional

Tentative for 1/5/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Terry Gonzalez

Represented By
Claudia C Osuna

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

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

Tuesday, February 2, 2021

Hearing Room 5B

10:30 AM

CONT... Terry Gonzalez

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 2, 2021

Hearing Room 5B

10:30 AM

8:20-12829 A-Rising Builders, Inc.

Chapter 7

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

SHARA ROBERSON
Vs
DEBTOR

Docket 25

Tentative Ruling:

Tentative for 2/2/21:
Was debtor served per LBRs? Continue for that purpose.
Appearance: optional

Party Information

Debtor(s):

A-Rising Builders, Inc.

Represented By
Joseph M Tosti

Movant(s):

Shara Roberson

Represented By
Paul J Carter

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 2, 2021

Hearing Room 5B

11:00 AM

8:12-13720 Tina Nguyen

Chapter 7

#3.00 Order To Show Cause Re Status Of This Case And Why Warrant Should Not Be Closed

Docket 0

Tentative Ruling:

Tentative for 2/2/21:

The court issued this OSC because the warrant for debtor's arrest has been outstanding now for over eight years without, insofar as the court can see, any progress. Chambers was contacted a few months ago by the U.S. Marshal asking for direction as to whether further action on its part was required. Here's the dilemma: The Marshals will do what the court requires, but do not have adequate information about place and identity to "pick her up." They would need to receive additional information. The court is willing to leave the warrant open but is disinclined to require the Marshals to do a lot of investigation. If the Trustee wants to pursue the matter he needs to figure out how to provide the Marshals more accurate and current information so they can verify and make an arrest. The Trustee of course faces a "no asset" case with only a possibility of assets. The court sympathizes. So, it becomes ultimately a question of who will advance resources into this old case and to what degree. The court has allowed the closing with unadministered assets, but is disinclined to require the Marshal to expend his resources absent better information as to location of the fugitive. If the Trustee has current information as to her whereabouts she can be arrested. Perhaps the warrant can be kept active in case she is arrested on another charge. The court is looking for direction as to what the Trustee wants to do, and at who's expense. Clearly, no court enjoys seeing its order ignored, but there are practical limitations. No tentative.

Appearance: required

Party Information

Debtor(s):

Tina Nguyen

Represented By
Chris T Nguyen

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

Tuesday, February 2, 2021

Hearing Room 5B

11:00 AM

CONT... Tina Nguyen

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Martina A Slocomb
D Edward Hays

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

Tuesday, February 2, 2021

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#4.00 Debtor's Motion to Convert Case From Chapter 7 to 11.
(cont'd from 12-01-20 per order on stip. re: the cont. hrg. on defendant's
mtn to convert entered 11-17-20)

Docket 122

***** VACATED *** REASON: CONTINUED TO 3-23-21 AT 11:00 A.M.
PER ORDER GRANTING STIPULATION REGARDING THE
CONTINUED HEARING ON THE DEBTOR'S MOTION TO CONVERT
ENTERED 1-14-21**

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, February 2, 2021

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**

Wednesday, February 3, 2021

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/1616822295>

ZoomGov meeting number: 161 682 2295

Password: 165791

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, February 3, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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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**

Wednesday, February 3, 2021

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, February 3, 2021

Hearing Room

5B

10:00 AM

8:20-12856 1875 N Palm Canyon Partners II, LLC

Chapter 11

**#1.00 Status Conferene Re: Chapter 11 Voluntary Petition Non-Individual. LLC
(cont'd from 12-02-20)**

Docket 1

Tentative Ruling:

Tentative for 2/3/21:
Still no status report? Appearance: required

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, February 3, 2021

Hearing Room 5B

10:00 AM

8:20-12963 World of Dance Tour Inc.

Chapter 11

#2.00 Amended Application to Employ Kahana & Feld LLP as Special Litigation Counsel Pursuant to 11 U.S.C. § 327(E)

Docket 87

Tentative Ruling:

Tentative for 2/3/21:
Grant. Appearance is optional.

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**

Thursday, February 4, 2021

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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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/1607210570>

ZoomGov meeting number: 160 721 0570

Password: 102564

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, February 4, 2021

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.

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- 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, February 4, 2021

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**

Thursday, February 4, 2021

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.

**#1.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 12-03-20 per order approving stip to cont. s/c entered 11-23-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-11-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC.
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 12-16-20**

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 4, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#2.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
(set from obj. to & mtn to disallow proof of clm no. 65 hrg held on 8-11-20)

Docket 258

*** VACATED *** REASON: CONTINUED TO 3-11-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 12-16-20

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.

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

Thursday, February 4, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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.

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**

Thursday, February 4, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#3.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select
Portfolio Servicing, Inc.
(set from s/c hrg held on 8-11-20)

Docket 260

*** VACATED *** REASON: CONTINUED TO 3-11-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING,INC.
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 12-16-20

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

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Tentative for 2/25/20:
See #11

Party Information

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

Thursday, February 4, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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**

Thursday, February 4, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#4.00 PRE-TRIAL 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
(set from s/c hrg. held on 8-11-20)

Docket 476

*** VACATED *** REASON: CONTINUED TO 3-11-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING, LLC AND SELECT PORTFOLIO SERVICING, INC.
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 12-16-20

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.

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
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Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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**

Thursday, February 4, 2021

Hearing Room

5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#5.00 PRE-TRIAL 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) (cont'd from 1-07-21)

Docket 1

Tentative Ruling:

Tentative for 2/4/21:
Continue to March 4, 2021 @ 10:00AM Plaintiff to give notice.
Appearance: optional

Tentative for 1/7/21:
Continue to hear settlement referred to in December 23, 2020 Notice?
Appearance: required

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.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

CONT... Igor Shabanets

Chapter 7

Plaintiff(s):

Porsche Leasing Ltd.

Represented By
Stacey A Miller

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 4, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

#6.00 Motion To Dismiss First Amended Complaint

Docket 99

Tentative Ruling:

Tentative for 2/4/21:

This is defendant, Scott Gladstone's ("Defendant") motion to dismiss the First Amended Complaint ("FAC") of trustee, Karen Sue Naylor's ("Trustee") for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Defendant is the former chief executive officer and president of debtor, Anna's Linens, Inc. ("Debtor"). Trustee opposes the motion.

Defendant argues that the FAC fails to state a claim under any theory. Specifically, Defendant argues that Trustee has failed to plead facts sufficient to sustain a claim brought under or related to the Worker Adjustment and Retraining Act ("WARN Act"). For example, Defendant asserts that it is settled law that alleged violations of the WARN Act can only be brought against the corporate employer, not its officers. In other words, Defendant argues that this adversary proceeding is nothing more than a back-door effort to do indirectly that which cannot be done directly.

1. The FAC

In the FAC Trustee alleges that Debtor remained in operation as of the petition date and attempted to sell most of its operating assets to DW Partners in June of 2015, but the sale fell through. Following the failed sale Debtor filed its Emergency Motion ...For Entry Of Interim And Final Orders: (A) Authorizing Assumption Of Agency Agreement; (B) Authorizing Sale Free And Clear Of All Liens, Claims, And Encumbrances Pursuant To Bankruptcy Code Sections 363(B) And (F); (C) Approving The Store Closing Sale

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

Chapter 7

Guidelines; (D) Authorizing The Debtor To Abandon; And (E) Authorizing Lease Rejection Procedures With Respect To The Closing Stores Pursuant To Section 365 (the "Emergency Motion"), requesting 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. The Emergency Motion was granted in part, and delayed in part, at a hearing held on June 16, 2015, with a further hearing scheduled for June 29, 2015. Thereafter, in the FAC it is alleged on or about June 19, 2015, approximately 120 employees of the Debtor were discharged (the "Layoff"), without the distribution of notices allegedly required under the WARN Acts. No WARN Act notices were ever given regarding the Layoff.

The Trustee in the FAC alleges the Defendants were advised by various professionals engaged by the Debtor that WARN Act notices were required, and further that the Defendant knowingly elected not to instruct the Debtor's employees or staff to effectuate notices in compliance with the WARN Act despite such advice. Specifically, it is alleged that Defendant intentionally failed and/or consciously disregarded his duty to cause the Debtor to issue the requisite WARN Act notices given his interest in acquiring certain of the Debtor's operating locations and related assets for his personal benefit. The Trustee in the FAC further alleges that Defendant consulted with or engaged counsel to assist him in exploring his personal acquisition of operating locations and assets of the Debtor, and declined to authorize the issuance of WARN Act notices based upon his alleged belief that such notices would impair the going concern nature or value of the operating locations he wished to acquire.

On or about July 1, 2015, a class action adversary complaint was filed against the Debtor entitled *Linda Martz-Gomez on her behalf and on behalf of all other persons similarly situated v. Anna's Linens, Inc., et al.*, Adversary Case No. 8:15-ap-01293-TA (the "WARN Action"). The plaintiffs in the WARN Action sought an unspecified amount of damages on behalf of herself and others similarly situated as an allowed first priority administrative expense claim against the Debtor 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

**United States Bankruptcy Court
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CONT... Anna's Linens, Inc.

Chapter 7

have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period. In the FAC Trustee concedes that on August 4, 2015, Defendant caused the Debtor to provide notice to some of its employees pursuant to the WARN Acts, but not to employees who were the subject of the Layoff. After August 4, 2015, Debtor discharged additional employees.

The Trustee in the FAC alleges that as a result of Defendant's failures, the estate has incurred and continues to incur attorneys' fees and costs in defense of the WARN Action, and will incur damages in the form of an allowed claim in favor of the WARN Action class members, whether through settlement or a judgment following trial.

Finally, in the FAC Trustee alleges that on or about September 15, 2020, the Trustee filed her motion for authorization to compromise the WARN Action (the "WARN Compromise Motion"). On or about October 13, 2020 the court granted preliminary approval of the WARN Compromise Motion, over the opposition of Defendant Gladstone, with a final approval hearing held on December 9, 2020. The Settlement was formally approved by order of this court on December 17, 2020.

The FAC contains two causes of action:

- (1) Breach of Fiduciary Duty/Duty of Care against Defendants Gladstone and Does 1 through 10;
- (2) Negligence Against Defendants Gladstone and Does 1 through 10.

In support of the first cause of action, the Trustee alleges that Defendant, in his capacity as CEO and President of Debtor, owed fiduciary duties to the Debtor and to the estate, including the highest duties of good faith, fair dealing, loyalty and care. In such a capacity, the Trustee in the FAC alleges, Defendant had the responsibility of providing notifications to Debtor's employees consistent with both the Federal and California WARN Acts, and intentionally failed to do so in favor of his own interests, which led to the *Martz-Gomez* action and subsequent depletion of estate funds through the settlement.

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Anna's Linens, Inc.

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In support of the second cause of action, the Trustee is the FAC alleges that in addition to fiduciary duties, Defendants also owed a duty to the estate to exercise reasonable care when acting on Debtor's behalf and that Defendant breached this duty. Again, the Trustee in the FAC alleges that this involved failure to issue the WARN Act notices, which then led to the *Martz-Gomez* action and subsequent settlement.

2. 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.*

FRCP 8 requires a pleading that sets forth a claim for relief to contain a short and plain statement of the claim showing that the pleader is entitled to relief. It is not necessary at the pleading stage to plead evidentiary detail, but facts must be alleged to sufficiently apprise the defendant of the complaint against him. *Kubick v. F.D.I.C. (In re Kubick)*, 171 B.R. 658, 660 (9th Cir. BAP 1994). Clarification, greater particularity, and other refinements in pleading are accomplished through motions, discovery, pretrial orders, and liberal toleration of amendments. *Yadidi v. Herzlich (In re Yadidi)*, 274 B.R. 843, 849 (9th Cir. BAP 2002).

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

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CONT... Anna's Linens, Inc.

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not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556, 127 S. Ct. 1955, 1964-65 (2007) A complaint must contain factual matter sufficient to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662 129 S.Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* 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 are insufficient. *Id.*

3. Is the Complaint Sufficient?

The short answer is most likely, yes. The motion takes issue with the asserted vagueness of the FAC and several of its allegedly conclusory statements. Specifically Defendant in the motion asserts that, as this adversary proceeding is nearly 4 years old, the FAC should be required to provide more definite detail such as the names of other defendants, the names of the professionals who advised Defendant to issue the WARN Act notices, and when such advice was dispensed. In other words, the Defendant in his motion argues that the FAC fails to demonstrate that Defendant ever received the alleged advice regarding the WARN Act notices. Somewhat confusingly, in the motion it is alleged that the FAC fails to allege Defendant's actual intent to transfer assets to himself with the requisite particularity consistent with Rule 9(b). See *In re ATWR Liquidation, Inc.*, 548 B.R. 300, 310 (Bk. C.D. Cal. 2016) ("[Rule 9(b) applies to a claim] alleging actual intent by the [defendants] to transfer assets to themselves at the expense of Debtor or its creditors."). But as will be discussed below, the court does not see that as fatal for the FAC.

The court agrees with the motion to the extent that more detail is almost always preferable; but here, the court sees enough detail that should

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reasonably enable Defendant to understand what is being alleged against him. Specifically, it is alleged that Defendant intentionally elected not to issue WARN Act notices or cause them to be issued in order to preserve the going concern value of Debtor, and to preserve certain locations he wished to acquire for himself. It is true that the FAC does not identify these locations or clearly establish when these decisions were made, but it is not clear that it must. Clearly Defendant is on notice of what is being alleged, which for purposes of a Rule 12(b)(6) motion, is all that is required. Defendant seems to be pushing that the FAC must be judged under the higher Rule 9 standard, but for reasons explained below, that is not necessarily the case.

Defendant also argues that under the laws of Delaware, Debtor's state of incorporation, Debtor's certificate of incorporation allows for a provision exculpating its directors from monetary liability for breach of duty of care. Defendant argues that Debtor's certificate of incorporation includes such a provision, which limits director liability to breach of duty of loyalty, bad faith, intentional misconduct, or a knowing violation of law. He argues that the FAC's allegations are far too vague to support any cause of action for fraud or anything that could be considered fraud. Similarly, the motion argues that the FAC is far too vague to support a cause of action for negligence of any kind. Defendant in the motion also argues that the FAC impermissibly attempts to circumvent the provisions of the WARN Act by trying to hold Debtor's officers personally liable for the alleged violations even though the statute states that WARN Act claims may only be brought against the employer, which in this case is Debtor. See e.g., *Cruz v. Robert Abbey, Inc.*, 778 F. Supp. 605, 608 (E.D. N.Y. 1991) (granting motion to dismiss WARN Act claims against individual owner and officer of the corporate employer, on the ground that "the statute, its regulations and its legislative history indicate that 'employer' does not include individual persons.").

Trustee persuasively argues that the motion mistakes the applicability of Rule 9(b) in this case, as the Rule only requires that allegations of fraud or mistake must be pled with particularity, but issues of malice, intent, knowledge, and other conditions of a person's mind may be pled generally. Trustee argues that Defendant's assertion that Rule 9(b) finds purchase when it is alleged that an officer intended to transfer assets to himself at the

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expense of a debtor and its creditors as established by one distinguishable case, *In re AWTR Liquidation, Inc.*, 548 B.R. 300. (Bk. C.D. Cal. 2016). This case is distinguishable because *AWTR* involved not breach of the duty of care or loyalty, or negligence claims, but rather allegations brought by a liquidating trustee under a confirmed Chapter 11 plan against a debtor's former directors and officers that they breached their fiduciary duties to the debtor, including aiding and abetting, corporate waste and unjust enrichment, and the actually fraudulent transfer of the debtor's assets. Trustee argues persuasively that the quote taken from *AWTR* (discussed above), is taken out of context and argues that the *AWTR* court was careful to note that Rule 9(b) did not extend to the claims for breach of fiduciary duty or alleged failure of oversight by other officers. *Id.* at 310.

Regarding the laws of Delaware, Trustee agrees that the motion has accurately characterized the state of the law but argues that it strengthens Trustee's position because the allegations against Defendant are in his capacity as an *officer* of Debtor, not just as a director. Trustee argues that officers do not enjoy the same protections as directors. Further, Trustee argues, the exculpation provision does not shield directors (or officers) from the duty of good faith or the duty of loyalty, or for intentional misconduct. See Delaware Corporations Code §102(B)(7) (the certificate of incorporation "shall not eliminate or limit the liability of a director: (i) For any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under §174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit.") The motion, Trustee persuasively argues, attempts to mischaracterize the allegations in the FAC as Defendant attempting to somehow transfer estate assets to himself, which would implicate Rule 9(b). However, the FAC clearly does not allege any kind of intentionally fraudulent transfer or even constructively fraudulent transfer of estate assets to Defendant, but rather only that Defendant failed to perform his duties, namely notifying employees consistent with the WARN Act, because he favored his own interests in acquiring some of Debtor's assets. This does not in the court's view implicate the higher pleading standards of Rule 9(b).

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Trustee argues that in the FAC she clearly alleges intentional breach of existing duties, including the duty of care, by ignoring the advice of professionals in connection with issuing WARN Act notices, and thereby exposed Debtor to foreseeable harm and eventual damages through the *Martz-Gomez* action. Trustee argues that under Delaware law, gross negligence is the equivalent of breaching the duty of care. See *Feeley v. NHAOCG, LLC*, 62 A.3d 649, 664 (Del. Ch. Nov. 18, 2012) (citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del.1984)). See also *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *8 (Del. Ch. Aug. 26, 2005) (equating gross negligence with the duty of care). "In the duty of care context with respect to corporate fiduciaries, gross negligence has been defined as a reckless indifference to or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason." *In re Martha Stewart Living Omnimedia, Inc. S'holder Litig.*, 2017 Del. Ch. LEXIS 151, at * 61-62 (Del. Ch. Aug. 18, 2017) (citing *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693 (Del. Ch. 2005)).

Here, Trustee argues that in the FAC she alleges gross negligence in that Defendant intentionally disregarded professional advice in deciding not to issue WARN Act notices for fear it would damage his own personal interests. Such alleged misconduct, Trustee argues, is enough to sustain a cause of action for gross negligence under the Delaware standard, but concedes that if "gross negligence" needs to more explicitly appear in the complaint, Trustee can make that adjustment.

Although Defendant argues that the FAC is not as detailed as it could be, as evidenced by more detailed allegations in the Opposition to this motion, in a Rule 12(b)(6) context, the main test is whether, considering the four corners of the FAC, Defendant is sufficiently apprised of the allegations and the causes of action. Here, Defendant urges the court to dismiss the FAC because the FAC does not establish the name(s) of the individual professionals nor does it identify the defendants who received professional advice regarding the WARN Act, nor does it say when such advice was supposedly rendered. As the court reads the FAC, it is obvious that Trustee is alleging that Defendant was one such recipient, possibly among others. The court is also obliged to look at the facts in the light most favorable to Trustee

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as the nonmoving party. In doing so, the court gives the benefit of the doubt over the timing of the advice in Trustee's favor, which is to say, that the advice was probably rendered before the alleged WARN Act violations occurred. The precise timing of the professional advice, and whether that advice was heeded, are questions of fact to be properly resolved in later proceedings. The court is also persuaded that the FAC does not allege fraud (certainly not explicitly) and is skeptical that this case is even grounded in fraud as described in cases like *Krys v. Pigott*, 749 F.3d 117, 129 (2d Cir. 2014). As such, the FAC is relieved of the heightened pleading requirements under Rule 9(b). Instead, as the court reads the FAC, the facts demonstrate only that Defendant put his personal interests ahead of Debtor's interests (not necessarily fraudulently), which caused foreseeable damages to Debtor. Taken as true, these allegations would appear to properly plead causes of action for breach of fiduciary duty and/or negligence (and probably gross negligence).

Another point raised by the motion that might need to be addressed by Trustee is the assertion that WARN Act claims can only be brought against the employer, which is Debtor, not Defendant. However, this adversary proceeding seeks indemnification for damages to the estate stemming from the alleged WARN Act violations (which were properly dealt with in the *Martz-Gomez* action), which the court sees as a meaningful distinction. In any case, Trustee does not really address this nuance at any great length in the either the FAC or the Opposition.

In sum, the FAC is probably enough, though it could have (and probably should have) been more detailed. Still, the court does not see anything that is obviously fatal to the FAC, particularly when considering the strong policy of deciding cases on their full merits and the directive that factual doubts are to be resolved in Trustee's favor as the nonmovant. Defendant's arguments are not without some appeal, but the court has to be mindful of what sort of motion this is. In other words, if this were a Rule 56 motion, Trustee would have a much steeper hill to climb. But at this very preliminary stage in the pleadings, the court is satisfied that just enough is alleged in the FAC to warrant moving on to the next stage of litigation. Of course, if Trustee feels that there would be a benefit in further amendment to

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CONT... Anna's Linens, Inc.

Chapter 7

the complaint to, for example, include more relevant detail and/or add more explicit causes of action, the court would welcome those additions as they may prove critical in the days ahead.

Deny

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):

Scott Gladstone

Represented By
Kenneth E Johnson
Eric J Fromme
Christopher J Harney

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
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CONT... Anna's Linens, Inc.

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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

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

Chapter 7

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

- #7.00** Evaluation Hearing Re: 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 11-17-20)

Docket 444

***** VACATED *** REASON: OFF CALENDAR - ORDER ON
STIPULATION REGARDING CONTINUED HEARING ON DISCOVERY
DISPUTE (POST-JUDGMENT DISCOVERY AND JUDGMENT DEBTOR
EXAMINATIONS ENTERED 2-03-21**

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

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

Chapter 7

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 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

**United States Bankruptcy Court
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CONT... Hoag Urgent Care-Tustin, Inc.

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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
Central District of California
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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

**#8.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 11-05-20 per order approving stip. to cont. s/c and mtn to dsm entered 10-23-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-06-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 1-21-21**

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
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Thursday, February 4, 2021

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

**#9.00 Motion to Dismiss Adversary Proceeding
(con't from 11-05-20 per order approving stip. to cont. s/c and mtn to dismiss entered 10-23-20)**

Docket 3

***** VACATED *** REASON: CONTINUED TO 5-06-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 1-21-21**

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 4, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#10.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Motion for an Order Finding Kenneth Gharib and Freedom Investment Corp. in Contempt of Court, Imposing Sanctions, and Continued Incarceration of Kenneth Gharib
(cont'd from 11-10-20)

Docket 457

***** VACATED *** REASON: CONTINUED TO 3-09-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE RE: CONTEMPT AND/OR DEFENSE OF
IMPOSSIBILITY RE: KENNETH GHARIB ENTERED 2-03-21**

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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, February 4, 2021

Hearing Room

5B

11:00 AM

CONT... Kenny G Enterprises, LLC

Chapter 7

Tentative for 9/25/18:
No tentative.

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

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

Tuesday, February 9, 2021

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/1606230869>

ZoomGov meeting number: 160 623 0869

Password: 657966

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
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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).

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10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, February 9, 2021

Hearing Room 5B

10:30 AM

8:20-10220 Antonio Vega Benavides

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**SELECT PORTFOLIO SERVICING INC.
Vs
DEBTOR**

Docket 49

Tentative Ruling:

Tentative for 2/9/21:

The court is of course sympathetic to everyone suffering from the pandemic. But it would help if some proposal regarding adequate protection were offered. Will the plan be modified, and if so, when? What is the timetable regarding working out a mortgage assistance with lender, as noted in declaration? No tentative.

Party Information

Debtor(s):

Antonio Vega Benavides

Represented By
Sunita N Sood

Movant(s):

Select Portfolio Servicing Inc., 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, February 9, 2021

Hearing Room 5B

10:30 AM

8:21-10045 Amparo M Ulloa

Chapter 13

#2.00 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 2/9/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Amparo M Ulloa

Represented By
Matthew D. Resnik

Movant(s):

Amparo M Ulloa

Represented By
Matthew D. Resnik
Matthew D. Resnik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, February 9, 2021

Hearing Room 5B

11:00 AM

8:20-11560 Joe Anthony Santa Maria

Chapter 7

#3.00 United States' Motion To Delay Entry of Discharge From January 15, 2021 to March 15, 2021 To Preserve Standing To File A Motion To Convert Case From Chapter 7 To A Case Under Chapter 11 Pursuant to 11 U.S.C. § 706

Docket 35

Tentative Ruling:

Tentative for 2/9/21:
Grant through March 15, 2021. Appearance optional.

Party Information

Debtor(s):

Joe Anthony Santa Maria

Represented By
Nicholas W Gebelt

Movant(s):

UNITED STATES OF AMERICA

Represented By
Najah J Shariff

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, February 9, 2021

Hearing Room 5B

11:00 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#4.00 Trustee's Motion To Approve Compromise Of Controversy

Docket 150

Tentative Ruling:

Tentative for 2/9/21:
Grant. Appearance optional.

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
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Santa Ana
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Tuesday, February 9, 2021

Hearing Room 5B

11:00 AM

8:17-12346 Minh Canh Lam and Dao Mong Dinh

Chapter 7

#5.00 Chapter 7 Trustee's Final Report and Applications for Final Fees and Expenses

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

JEFFREY S. SHINBROT, APLC, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY LLP, TAX PREPARER

Docket 91

Tentative Ruling:

Tentative for 2/9/21:
Allowed as prayed. Appearance optional.

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, February 9, 2021

Hearing Room 5B

11:00 AM

8:18-11903 Rosheen Ann Shinske

Chapter 7

#6.00 Chapter 7 Trustee's Final Report and Application for Final Fees and Expenses

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

WEILAND GOLDEN GOODRICH LLP, ATTORNEY FOR CH. 7 TRUSTEE

VALIANT LAW, SPECIAL COUNSEL FOR TRUSTEE

HAHN FIFE & COMPANY LLP, TAX PREPARER FEES

Docket 51

Tentative Ruling:

Tentative for 2/9/21:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Rosheen Ann Shinske

Represented By
William P White

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Beth Gaschen
Ryan W Beall
Raymond Babaian

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, February 9, 2021

Hearing Room 5B

11:00 AM

8:19-12978 David Yanez

Chapter 7

#7.00 Trustee's Final Report And Applications For Compensation

WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE

WEILAND GOLDEN GOODRICH LLP, ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CH 7 TRUSTEE

Docket 71

Tentative Ruling:

Tentative for 2/9/21:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

David Yanez

Represented By
Summer M Shaw

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Reem J Bello
Ryan W Beall

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, February 10, 2021

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10:00 AM

8: -

Chapter

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Video/audio web address:

<https://cacb.zoomgov.com/j/1614748393>

ZoomGov meeting number: 161 474 8393

Password: 854174

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
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10:00 AM

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Chapter

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10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Wednesday, February 10, 2021

Hearing Room 5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#1.00 Status Conference RE: Chapter 11 Voluntary Petition Non-Individual. LLC

Docket 1

Tentative Ruling:

Tentative for 2/10/21:

The deadlines proposes for filing of claims are acceptable but should be the subject of their own motion(s). The court is inclined to set March 31 2021 as a continued status conference to coincide with the cash collateral hearing already on calendar, unless it should be a few weeks later to follow a filing of plan and disclosure?

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

**United States Bankruptcy Court
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Wednesday, February 10, 2021

Hearing Room 5B

10:00 AM

8:19-11153 Harry L Morris, Jr.

Chapter 11

#2.00 Motion For Approval Of Chapter 11 Disclosure Statement And Copy Of Plan Of Reorganization

Docket 159

Tentative Ruling:

Tentative for 2/10/21:

The DS has some problems as Debtor seems to admit, especially surrounding the details of the proposed sale. In the reply, Debtor states that the DS will be amended to include details of a pending (?) sale of his real property.

Debtor also concedes that amendment to the DS is required as to the Buncher claim . Debtor also disputes the allegation of fraud in connection with the MORs because he claims that his monthly alimony payments are deducted before funds are added to his DIP account. It is not clear from Ms. Morris' opposition whether she is conceding that Debtor is current on his monthly alimony obligations. Debtor also claims that the opposition confuses "impaired" and "disputed" when discussing Class 2 creditors such as Deutsche Bank and County of Orange. To be clear, Debtor is asserting that those claims are disputed.

In sum, the DS requires amendment, as Debtor seems to concede. The sale of real property that the entire plan depends upon has not been consummated, despite an alleged sale contract being in place. As the U.S. Trustee points out, there is no timeline for the sale of the property. Some of Mrs. Morris' opposition raise issues of confirmation, not necessarily of adequate disclosure. Still, when the DS is amended, Debtor would do well to take some of Mrs. Morris' comments to heart and address them, particularly, the community property/community debt portion of the opposition. As the U.S. Trustee points out, the feasibility of the plan is open to question. Thus, the hearing on the adequacy of the DS should be continued to allow for a sale to be actually completed (or at least imminent) and for Debtor to address the concerns put forth by the U.S. Trustee and Mrs. Morris. It appears that a motion to approve the sale of real property has been filed and is on calendar

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CONT... Harry L Morris, Jr. Chapter 11
for 3/10/21. Continue to either that date or shortly thereafter to allow corrections and supplements to DS.

Party Information

Debtor(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

Movant(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

**United States Bankruptcy Court
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10:00 AM

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 12-02-20)

Docket 7

Tentative Ruling:

Tentative for 2/10/21:
Continue on same terms until continue disclosure statement hearing (see # 4.1).

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

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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.

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.

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

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10:00 AM

CONT... Talk Venture Group, Inc.

Michael Jay Berger

Chapter 11

**United States Bankruptcy Court
Central District of California
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10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#4.00 Motion For Approval Of Chapter 11 Disclosure Statement
(cont'd from 12-02-20)

Docket 151

Tentative Ruling:

Tentative for 2/10/21:
See #4.1.

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-

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CONT... **Talk Venture Group, Inc.**

Chapter 11

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 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

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CONT... Talk Venture Group, Inc.

Chapter 11

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 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
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10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#4.10 Debtor's Motion For Approving The Adequacy Of The Debtor's Amended Disclosure Statement And Setting Dates And Procedures For Approval Of Amended Plan Of Reorganization

Docket 188

Tentative Ruling:

Tentative for 2/10/21:

In December the court issued a lengthy tentative ruling describing the shortcomings of Debtor's amended disclosure statement. Unfortunately, as noted by the objectors, U.S. Trustee, Banc of California, and Wells Fargo, many of those shortcomings persist.

Again, the issue flagged by all objecting parties is the absolute priority rule, and in particular, the issue of "new value." In December, the court was skeptical that what Debtor had then proposed to contribute constituted new value, and no market testing appeared consistent with the Supreme Court's decision in *Bank of America NT&SA v. 203 N. La Salle St. P'tsp.*, 526 U.S. 434, 119 S. Ct. 1411 (1999) was attempted. 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.

To Debtor's credit, there was an attempt to find extra funds to supplement the meager return creditors might receive. Specifically, as noted by the objecting parties, the latest DS states that Debtor will make an additional contribution of \$5,000, which, in the objecting parties' view, does not move the needle as the recovery for creditors will still be only about 1% to be paid over a period of 5 years. However, perhaps sensing that this

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CONT... **Talk Venture Group, Inc.**

Chapter 11

additional contribution would likely still be considered *de minimis*, in its Reply, Debtor asserts that there will be an even larger contribution totaling now \$26,000. This money reportedly comes from Debtor's principal (\$10,000) and a relative of Debtor's principal (\$16,000). With these additional funds, Debtor asserts that the total of funds available for Debtor's general unsecured creditors is now \$71,866 to be paid over 5 years (though the claims total more than \$4.5 million). That takes the total recovery for creditors to approximately 1.57%, which Debtor concedes is small but argues is not *de minimis*. In support of this assertion, Debtor cites *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 656 (9th Cir. 1997) where the court stated, "[w]e decline to define a bright-line rule, but merely hold that a proposed contribution of one-half of one percent of each of the various quantities judicially recognized as relevant to the substantiality comparison falls within the *de minimis* range." However, that case cites several other cases undercutting Debtor's argument. For example, with respect to the threshold for the "substantial" prong, the *Ambanc* court noted:

"First, \$32,000 is less than 0.5% of the total unsecured debt of approximately \$ 4 million. This percentage is well below the percentage of unsecured debt that other courts have held to be insubstantial as a matter of law. Compare, e.g., *In re Woodbrook Assocs.*, 19 F.3d 312, 320 (7th Cir. 1994) (\$ 100,000 contribution not substantial because it is only 3.8% of \$ 2.6 million unsecured debt); *In re Snyder*, 967 F.2d 1126, 1132 (7th Cir. 1992) ('the disparity between the contribution and the unsecured debt,' at most \$22,000 or 2.2% of approximately \$ 1,000,000 unsecured claims, was 'so extreme . . . there [was] no need to proceed any further . . .'); and *In re Olson*, 80 B.R. 935 (Bankr. C.D. Ill. 1987) (\$5,000, or only 1.56% on the \$ 320,000 due all unsecured creditors, held insubstantial), aff'd, 1989 U.S. Dist. LEXIS 18177, No. 88-4052, 1989 WL 330439 (C.D. Ill. Feb. 8, 1989), with *In re Elmwood, Inc.*, 182 B.R. 845 (D. Nev. 1995) (\$150,000, less than 4% of unsecured debt, approved where a higher

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contribution would not correct the undesirable location and crime problems associated with the primary asset, an apartment complex)." *Id.* at 655-56.

Debtor has not cited any authority suggesting that his contribution, even with the late enhancements, should be seen as a substantial contribution. On the contrary, there appears to be authority severely undercutting Debtor's argument that the total contributions can be seen as substantial. Debtor's rather creative argument that the new contribution constitutes most of the funds available for general unsecured creditors does not change the fact that the recovery is still below the range of a substantial contribution. Thus, it appears that the objecting parties have raised a large hurdle for Debtor with respect to the absolute priority rule.

The objecting parties also raise issues of feasibility as it is unclear from the MORs and DS how Debtor proposes to adequately fund a plan. Banc of California notes that Debtor's speculative Plan leans on continued demand for ecommerce business and unexplained 25% growth in revenue, even though the Debtor never achieved this result during this bankruptcy proceeding. In reply, Debtor notes that the projection in the amended DS should be interpreted by taking into consideration the fact that Debtor's cumulative profit and loss statement attached to December 2020 MOR is prepared using an "accrual" accounting method, whereas the MOR summary (Exhibit-D) is prepared using the actual receipts and disbursements. But as pointed out by Wells Fargo, this explanation is rather opaque. Debtor also notes that certain expenses will likely be eliminated following confirmation, such as vehicle, professional, and shipping expenses in addition to the elimination of \$10,000 monthly adequate protection payments due to Wells Fargo. Debtor also urges consideration of the effect of the ongoing pandemic and how that has caused supply chain problems resulting in low profits for several months. Despite all these problems, Debtor asserts that its business remains profitable as demonstrated by the November and December 2020 MORs. Debtor asserts its willingness to work with the objecting creditors to

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work out specific payment plans to ease their anxiety about the feasibility of a confirmed plan. Banc of California is skeptical of the liquidation analysis and believes that once all assets are included, and specifically all litigation and avoidance claims, the creditors of the estate will get more in a liquidation than under this proposed plan. Debtor again reminds the court that if a plan is not confirmed, the liquidation analysis shows that unsecured creditors, such as Banc of California will likely not receive any recovery at all and asserts that there are no viable avoidance actions and the litigation against former managers is certain to be expensive and has no guarantee of a positive outcome.

Also, as noted back in December, Wells Fargo argued that the DS was inadequate because it failed to disclose why junior creditors were being put on equal footing with Wells Fargo despite Wells Fargo's undisputed senior position. Wells Fargo asserts that the amended DS does not provide any illumination on this issue. Wells Fargo also takes issue with the valuation of Debtor and asserts that the DS does provide a user-friendly guide on how to interpret the valuation methods, rendering the appraisal of little value.

In sum, the amended DS is still beset by fundamental problems, mainly the absolute priority rule as was flagged by all three objecting parties, including the U.S. Trustee. The court also sees as problematic the fact that the enhanced contribution was only revealed in Debtor's reply, leaving little time for interested parties to respond. The court notes that there is a line of authority (cited above) that strongly suggests that a recovery of 1.57% is still in the *de minimis* range, and therefore does not qualify as "substantial" for purposes of determining "new value." Debtor has also not cited any contrary authority. The court also has questions about potential litigation against some of Debtor's former managers. This litigation is listed in Debtors schedules as being worth as much as \$700,000, but Debtor states that the litigation costs are prohibitive. There may also be viable avoidance claims against Debtor's principal Paul Kim, which are not adequately addressed.

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On the other hand, some of the points raised (absolute priority) are primarily confirmation issues, not necessarily disclosure issues. The reason we are still at the disclosure phase is that the court remains unconvinced that the Debtor is not still in the "patently unconfirmable" status.

As Debtor has the burden of persuading the court that the DS adequately discloses sufficient pertinent information for creditors to vote on a plan, that burden is still not carried as fundamental problems persist and the DS seems to raise more questions than it answers. More importantly, the parties in interest here need to soberly decide how this case will proceed. This is no longer a young case. Will Debtor attempt to cramdown in the teeth of this opposition? If so, one more attempt to amend the DS will be afforded but skepticism remains.

Continue once more

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger

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8:20-10168 Paul Se Won Kim

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#5.00 Debtor's Motion For Order Approving The Adequacy Of The Debtor's Disclosure Statement And Setting Dates And Procedures For Approval Of Plan Of Reorganization

Docket 79

Tentative Ruling:

Tentative for 2/10/21:

There is considerable overlap with the Talk Venture case (see #4.1). Since feasibility of the Kim matter depends almost entirely on success of Talk Venture, the two cases should probably travel together. Feasibility is a huge issue. Since debtor proposes to keep his interest in Talk Venture absolute priority and new value are also huge issues here, and it would seem that the new value proposed is just as *de minimus* as in that case. The court does not believe waiver of administrative claims in this context fits the definition of "money's worth" at least absent authority to that effect. Continue one more time to coincide with Talk Venture.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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8:20-10168 Paul Se Won Kim

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#6.00 Second Interim Application for Compensation and Reimbursement of Expenses
for Period: 4/16/2020 to 12/31/2020

MICHAEL JAY BERGER, DEBTOR'S ATTORNEY,

FEE: \$16,775.50

EXPENSES: \$259.55.

Docket 82

Tentative Ruling:

Tentative for 2/10/21:
Allow as prayed.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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8:20-10168 Paul Se Won Kim

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#6.10 Application For Payment Of Interim Fees And/Or Expenses For
Period: 4/30/2020 to 12/31/2020

JENNIFER M. LUI, ACCOUNTANT,

FEE: \$2325.00

EXPENSES: \$.

Docket 89

Tentative Ruling:

Tentative for 2/10/21:
Allow as prayed.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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8:20-10958 Bradley Ray Fox

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#7.00 Final Application for Compensation and Reimbursement of Costs for Period:
7/20/2020 to 1/20/2021

**LAW OFFICES OF MICHAEL G. SPECTOR FORMER CHAPTER 11
ATTORNEYS**

FEE: \$24,896.00,

EXPENSES: \$757.75.

Docket 98

Tentative Ruling:

Tentative for 2/10/21:

Allow as prayed. Client declaration in support of application filed on February 4, 2021.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Vicki L Schenum

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8:20-10143 Bridgemark Corporation

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Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#8.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 12-17-20 per order on stip to further cont s/c entered 12-14-20)**

Docket 1

Tentative Ruling:

Tentative for 2/10/21:
Continue as requested assuming some update on settlement efforts at hearing.

Appearance: required

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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**#9.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 12-17-20 per order approving stip. to cont. hrgs entered
12-14-20)**

Docket 1

Tentative Ruling:

Tentative for 2/10/21:
Same as #8. Appearance: required

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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#10.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 12-17-20 per order approving stip, to cont, hrgs entered
12-14-20)

**PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR**

Docket 53

Tentative Ruling:

Tentative for 2/10/21:
Same as #8 and 9. Appearance: required

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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**#11.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 12-17-20 per order apprvg stip. to cont. hrgs, entered
12-14-20)**

Docket 54

Tentative Ruling:

Tentative for 2/10/21:

See #8 and 9.

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

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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 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 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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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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CONT... Bridgemark Corporation

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

#12.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 12-17-20 per order apprvng stip. to cont. hrgs entered 12-14-20)

Docket 93

Tentative Ruling:

Tentative for 2/10/21:
See #8 and 9.

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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8:21-10256 BioXXel, LLC

Chapter 11

#13.00 Emergency Motion For Order Prohibiting Utility Providers From Altering, Refusing Or Discontinuing Service, (B) Deeming Utilitiess Adequately Assured Of Future Performance And (C) Establishing Procedures For Resolving Request For Additional Adequate Assurance Of Payment.
(OST Signed 2-08-21)

Docket 9

Tentative Ruling:

Tentative for 2/10/21:
Grant absent opposition at hearing.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood

Movant(s):

BioXXel, LLC

Represented By
David Wood

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10:00 AM

8:21-10256 BioXXel, LLC

Chapter 11

#14.00 Emergency Motion For Order Authorizing Use of Cash Collateral And
Determining That Its Secured Creditor Is Adequately Protected
(OST Signed 2-08-21)

Docket 10

Tentative Ruling:

Tentative for 2/10/21:

Grant absent opposition at the hearing subject to a point of clarification .
Does debtor through its motion seek to alter the normal attachment of
security interest to accruing post-petition rents under the standard provisions
of most trust deeds? The motion could be read as so arguing, i.e. that value
of the fee interest is alone sufficient. Such a reading is not favored and would
require a great deal more than is shown here, certainly not on shortened time.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood

Movant(s):

BioXXel, LLC

Represented By
David Wood

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8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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<https://cacb.zoomgov.com/j/1617211258>

ZoomGov meeting number: 161 721 1258

Password: 217229

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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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 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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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
(cont'd from 10-29-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-25-21 AT 10:00 A.M.
PER ORDER ON STIPULATION BETWEEN PLAINTIFF &
DEFENDANT/COUNTERCLAIMANT FOR AN ORDER TO CONTINUE
STATUS CONFERENCE ENTERED 12-18-20**

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

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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 12-03-20 per order appr. stip to cont. s/c entered 11-19-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-13-2021 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO EXTEND DEADLINE TO
RESPOND TO COMPLAINT AND CONTINUING STATUS
CONFERENCE ENTERED 2-10-21**

Tentative Ruling:

Tentative for 2/11/21:
A stipulation to continue?

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

8:19-12795 Lorraina C. Navarette

Chapter 7

Adv#: 8:19-01209 Lindbergh v. Navarette

#3.00 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 12-03-20)**

[fr: 1/21/20, 4/7/20, 6/23/20]

Docket 3

Tentative Ruling:

Tentative for 2/11/21:

Why no status report from Plaintiff? That was similarly the case at the last status conference in December, 2020. Dismiss for failure to prosecute.

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

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CONT... Lorraina C. Navarette

Chapter 7

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

**United States Bankruptcy Court
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8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01079 Remares Global, LLC, a Florida limited liability c v. Shabanets et al

- #3.10** PRE-TRIAL 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
(cont'd from 1-14-21)

Docket 1

Tentative Ruling:

Tentative for 2/11/21:

Why have we not heard anything from Olga Shabanets after the order setting aside default? Before setting deadlines for trial preparation shouldn't we have input from her? Was she served with alias summons and is so subject to another default? There is some suggestion that these two adversaries (# 20-01079 and #20-01002} should be combined for adjudication. If so, it would seem appropriate to first administratively merge the matters. The court will hear argument on that point.

Tentative for 1/14/21:

Continue to February 11, 2021 @ 10 a.m.

Appearance: optional

Tentative for 7/23/20:

Same schedule as #9.

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CONT... Igor Shabanets

Chapter 7

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

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

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8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01079 Remares Global, LLC, a Florida limited liability c v. Shabanets et al

#4.00 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
(set from hrg on mtn to set aside entry of default on 12-03-20)

Docket 1

Tentative Ruling:

Tentative for 2/11/21:
See #3.1

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

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CONT...

Igor Shabanets

Chapter 7

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.

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

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CONT... Igor Shabanets

Chapter 7

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
Tinho Mang

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10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #5.00** 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 12-10-20 per stip. to cont. pre-trial conference entered 12-08-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER RE PACIFIC WESTERN BANK'S MOTION TO APPROVE STIPULATION AND DISMISSAL OF ACTION IN ADVERSARY CASE NO. 8:17-AP-01240 TA ENTERED 1-28-21**

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

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10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

#6.00 PRE-TRIAL 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)
(set from s/c hrg held on 7-30-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-22-21 AT 10:00 A.M.
PER ORDER ON STIPULATION TO EXTEND DISCOVERY AND PRE-TRIAL DEADLINES ENTERED 2-09-21**

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.

Tentative for 3/26/20:

Status conference continued to June 25, 2020 at 10:00AM for completion of arbitration.

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

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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

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01002 Richard A Marshack in his capacity as Chapter 7 Tr v. Olga Shabanets, as

#7.00 Appellee Remares Global, LLC's Motion To Strike Portions Of Appellants'
Designation Of Record

Docket 93

Tentative Ruling:

Tentative for 2/11/21:

Grant as to all except docket #s 80-82, 85-87, but also add back in 62 and 79.

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

Plaintiff(s):

Richard A Marshack in his capacity

Represented By
D Edward Hays
Tinho Mang

**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
Tinho Mang

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#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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ZoomGov meeting number: 160 445 7009

Password: 673271

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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<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).

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- NONE LISTED -

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

Tuesday, February 16, 2021

Hearing Room 5B

10:00 AM

8:19-14802 Christi McGowan and Matthew McGowan

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**LAKEVIEW LOAN SERVICING, LLC
Vs.
DEBTOR**

Docket 38

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Christi McGowan

Represented By
Gary Polston

Joint Debtor(s):

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 17, 2021

Hearing Room 5B

1:30 PM

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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/1608138740>

ZoomGov meeting number: 160 813 8740

Password: 739822

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 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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Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, February 17, 2021

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Chapter

Tentative Ruling:

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**United States Bankruptcy Court
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, February 17, 2021

Hearing Room 5B

1:30 PM

8:20-13318 Aureliano Saucedo

Chapter 13

#1.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 2/17/21:

Does the amended plan address creditors and Trustee's concerns? Does short notice require continuance or are we ready for confirmation?

Party Information

Debtor(s):

Aureliano Saucedo

Represented By
Joseph A Weber

Movant(s):

Aureliano Saucedo

Represented By
Joseph A Weber
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, February 17, 2021

Hearing Room 1675

1:30 PM

8:20-13323 Theresa Lenore Stanec

Chapter 13

#2.00 Confirmation Of Chapter 13 Plan

Docket 7

Tentative Ruling:

Party Information

Debtor(s):

Theresa Lenore Stanec

Represented By
Gerald S Kim

Movant(s):

Theresa Lenore Stanec

Represented By
Gerald S Kim
Gerald S Kim
Gerald S Kim
Gerald S Kim

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, February 17, 2021

Hearing Room 5B

1:30 PM

8:20-13359 Michael L Duivis

Chapter 13

#3.00 Confirmation Of Chapter 13 Plan

Docket 7

Tentative Ruling:

Tentative for 2/17/21:
Is the amended plan opposed?

Party Information

Debtor(s):

Michael L Duivis

Represented By
Mark A Pahor

Movant(s):

Michael L Duivis

Represented By
Mark A Pahor
Mark A Pahor

Trustee(s):

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 17, 2021

Hearing Room 5B

1:30 PM

8:20-13465 Steve Hoon Lee

Chapter 13

#4.00 Confirmation Of Amended Chapter 13 Plan

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steve Hoon Lee

Represented By
Sanaz Sarah Bereliani

Movant(s):

Steve Hoon Lee

Represented By
Sanaz Sarah Bereliani
Sanaz Sarah Bereliani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, February 17, 2021

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1:30 PM

8:20-13469 Patricia Elaine Anderson-Hooper

Chapter 13

#5.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Elaine Anderson-Hooper

Represented By
David Lozano

Movant(s):

Patricia Elaine Anderson-Hooper

Represented By
David Lozano
David Lozano
David Lozano
David Lozano
David Lozano
David Lozano

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, February 17, 2021

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8:20-13476 Charles Aungkhin

Chapter 13

#6.00 Confirmation Of Chapter 13 Plan

Docket 11

***** VACATED *** REASON: OFF CALENDAR - ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED 1-28-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Aungkhin

Represented By
Chris T Nguyen

Movant(s):

Charles Aungkhin

Represented By
Chris T Nguyen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, February 17, 2021

Hearing Room 5B

3:00 PM

8:16-12067 Norberto Valladares

Chapter 13

#7.00 Trustee's Motion to Dismiss Case

Docket 66

Tentative Ruling:

Tentative for 2/17/21:

The reported efforts to resolve defaults and other issues is vague. Grant unless current or the Trustee agrees to more time.

Party Information

Debtor(s):

Norberto Valladares

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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3:00 PM

8:19-10049 Sunny Omidvar

Chapter 13

**#8.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 1-20-21)**

Docket 84

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION TO DISMISS CASE FILED 2-11-
21**

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or modification motion on file.
Appearance: required

Party Information

Debtor(s):

Sunny Omidvar

Represented By
Benjamin R Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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3:00 PM

8:19-10709 Ernest E Gonzales

Chapter 13

**#9.00 Trustee's Motion To Dismiss Case failure To Make Plan Payments.
(cont'd from 1-20-21)**

Docket 34

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 2-11-21**

Tentative Ruling:

Tentative for 1/20/21:
Grant unless current or by deadline for coming current as set.

Appearance: required

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
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Hearing Room 5B

3:00 PM

8:19-11810 Helen Ojeda

Chapter 13

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

Docket 62

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 2-08-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helen Ojeda

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, February 17, 2021

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3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

#11.00 Trustee's Motion to Dismiss Case

Docket 56

Tentative Ruling:

Tentative for 2/17/21:

Grant unless current or modification 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
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3:00 PM

8:19-13519 Brett Alan Pallett and Antoinette Serena Pallett

Chapter 13

#12.00 Trustee's Verified Motion for Order Dismissing Chapter 13 Proceeding for Failure to Make Plan Payments

Docket 40

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 2-08-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brett Alan Pallett

Represented By
Julie J Villalobos

Joint Debtor(s):

Antoinette Serena Pallett

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, February 17, 2021

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3:00 PM

8:19-14502 Andy T. Torres

Chapter 13

**#13.00 Trustee's Verified Motion To Dismiss Case
(cont'd from 1-20-21)**

Docket 80

Tentative Ruling:

Tentative for 2/17/21:
Grant unless debtor converts.

Tentative for 1/20/21:
Grant unless debtor converts.

Appearance: required

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
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3:00 PM

8:20-10655 Jose Magana

Chapter 13

#14.00 Trustee's Motion To Dismiss Case

Docket 33

Tentative Ruling:

Tentative for 2/17/21:

Continue to coincide with modification motion filed February 3.

Appearance: required

Party Information

Debtor(s):

Jose Magana

Represented By
Scott Dicus

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:14-14420 Vivian Anhvy Vu

Chapter 13

#15.00 Motion To Remove Abstract Of Judgment, For Compensatory And Punitive Damages, And Attorney's Fees And Costs Against Creditor Discover Bank For Intentionally Violating The Automatic Stay And Discharge, And Refusing To Remove The Abstract Of Judgment

Docket 84

Tentative Ruling:

Tentative for 2/17/21:
Continuance?

Party Information

Debtor(s):

Vivian Anhvy Vu

Represented By
Donald Blake Serafano
David Brian Lally

Movant(s):

Vivian Anhvy Vu

Represented By
Donald Blake Serafano
David Brian Lally

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 17, 2021

Hearing Room 5B

3:00 PM

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

Chapter 13

#16.00 Motion For Order Declaring Michael J. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 1987 And Stephan Andranian In Violation Of The Automatic Stay Pursuant To 11 U.S.C. § 362; Enjoining Prosecution Of Complaint In Arbitration; And For An Order To Show Cause Re: Contempt Against Michael R. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 187 And Stephan Andranian For Violating The Automatic Stay

Docket 127

Tentative Ruling:

Tentative for 2/17/21:

This is debtors, James and Kathleen Caringella's ("Debtors") motion for an order declaring Michael Kaplan, in his individual capacity and as trustee of the Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 1987 ("Kaplan"), and Kaplan's counsel, Stephen Andranian ("Andranian"), in violation of the automatic stay of 11 U.S.C. §362. The motion also seeks to enjoin prosecution of a complaint in arbitration. Finally, the motion seeks an order to show cause why Kaplan and Andranian should not be held in contempt. The motion is opposed by both Kaplan and Andranian (collectively "Opponents").

1. Factual Background

The somewhat serpentine facts of this case are reported by Debtors as follows:

Debtors filed a voluntary petition under chapter 13 on November 20, 2018. On November 23, 2018, the Clerk of the Bankruptcy Court caused written notice of the filing and of the automatic stay to be noticed to all interested parties, including Opponents. Several years earlier, on January 22, 2016, Kaplan filed a Complaint in the Orange County Superior Court, Case No. 30-2016-00831667-CU-BC-CJC (the "Kaplan State Court Action") against

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James G. Caringella and Kathleen J. Caringella

Chapter 13

Debtor James G. Caringella and his son, alleging claims for assault, battery and false imprisonment. Kaplan also attempted to allege claims for breach of fiduciary and fraud based on his contention that Debtor: (1) had used his position at Field Time Target & Training, LLC ("Field Time"), a California limited liability company 80% owned by Kaplan and 20% owned by Debtor, for his own personal benefit by reimbursing himself for personal items for his and his family's use; (2) had charged gasoline for personal reasons on the company credit card; (3) had improperly registered trademarks belonging to Field Time in his own name; (4) had made statements regarding Field Time's financial condition "through various reports and financial statements" that were false; and (5) had opened "secret bank accounts" and taken money from Field Time without Kaplan's knowledge or permission.

Less than a month later, on February 16, 2016, Kaplan, as the controlling member of Field Time, caused Field Time to file a separate state court action against Debtor and his family members, alleging the same claims based on the same facts for breach of fiduciary duty and fraud, Orange County Superior Court Case No. 30-2016-00835665-CU-BC-CJC (the "Field Time State Court Action"). Specifically, Field Time alleged that Debtor: (1) mismanaged Field Time; (2) stole Field Time property; (3) made representations "through various reports and financial statements" regarding Field Time's financial condition and business expenses that were false; (4) opened "secret bank accounts" without Kaplan's permission or knowledge; (5) registered trademarks in his own name; and (6) charged gasoline for personal reasons on the company credit card.

On November 20, 2018, the same date the bankruptcy petition was filed, Kaplan obtained a default judgment against Debtor in the Kaplan State Court Action in the amount of \$100,353.93, based solely on his claims for assault, battery and false imprisonment. At the time, Debtor had been abandoned by his personal attorney due to a personal tragedy involving the attorney's stepson. Debtor was allegedly unaware the default judgment had been entered. On November 20, 2018, Field Time also obtained a default judgment against Debtor in the Field Time State Court Action based on its claims that Debtor: (a) had converted Field Time's property for his own personal use; (b) had removed Field Time records and bank information, had

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James G. Caringella and Kathleen J. Caringella

Chapter 13

failed to turn over passwords and other information, and had opened "secret" bank accounts; and (c) improperly had charged gasoline on a company credit card that he used for his personal and family use.

On January 2, 2019, Kaplan and Field Time each filed Proofs of Claim in this Court. Kaplan's Proof of Claim is in the amount of \$100,353.93, based exclusively on the Default Judgment he obtained against Debtor in the Kaplan State Court Action. Kaplan has apparently never amended his Proof of Claim. Field Time's Proof of Claim is in the amount of \$101,695.98, based exclusively on the Default Judgment it obtained in the Field Time State Court Action.

On June 12, 2019, this Court entered an Order Granting Relief from Automatic Stay Pursuant to Stipulation. The Order provides, in relevant part, as follows:

IT IS HEREBY ORDERED THAT the validity and amount of Claim No. 6-1 filed by Michael Kaplan will be determined through the adjudication of that certain case now pending in the California Superior Court for the County of Orange, Case No. 30-2016-00831677-CU-BC-CJC, styled Michael R. Kaplan, an individual and as trustee of the Michael R. Kaplan Revocable Intervivos Trust dated May 26, 1987 v. James G. Caringella and Craig Caringella (the "Kaplan Action").

IT IS FURTHER ORDERED THAT the validity and amount of Claim No. 7-1 filed by Field Time Target and Training LLC will be determined through the adjudication of that certain case now pending in the California Superior Court for the County of Orange, Case No. 30-2016-00835665-CU-BC-CJC, styled Field Time Target & Training, LLC v. James G. Caringella, etc. et.al. (the "Field Time Action").

IT IS FURTHER ORDERED THAT the automatic stay under the United States Bankruptcy Code, 11 U.S.C. Section 362(a) is terminated as to the Debtors and the Debtors' bankruptcy estate with respect to the Kaplan Action and the Field Time Action.

IT IS FURTHER ORDERED THAT Kaplan and Field Time may proceed in their respective Actions in the nonbankruptcy forum to final

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James G. Caringella and Kathleen J. Caringella

Chapter 13

judgment (including any appeals) in accordance with applicable nonbankruptcy law. Kaplan and Field Time are directed to request that the State Court make sufficient finding for this Court to base a determination of the dischargeability of Kaplan and Field Time's respective claims.

Debtor obtained relief from the default judgment entered against him in the Field Time State Court Action on January 11, 2019. Field Time then proceeded to actively litigate the claims on which its default judgment was based. Thereafter, in the face of a subpoena Debtor served on Field Time's CPA to obtain its financial records, Kaplan caused Field Time to dismiss the Field Time Action on October 21, 2019. On January 20, 2020, Kaplan caused Field Time to withdraw its Proof of Claim in the Bankruptcy Court. Debtor also obtained an Order setting aside the Default Judgment obtained by Kaplan in the Kaplan State Court Action on January 24, 2020. Kaplan therefore had the right to again pursue those claims on which the Default Judgment was based, i.e., his First, Second and Third Causes of Action for assault, battery and false imprisonment. By this time, Field Time was actively litigating the claims for breach of fiduciary and fraud in the Field Time State Court Action, which is the subject of its own Proof of Claim.

Kaplan thereafter moved the State Court to compel arbitration of his claims, and those asserted by Debtor in his Cross-Complaint filed on February 13, 2020, which the State Court granted on July 13, 2020. After the State Court granted his motion to compel arbitration, on July 13, 2020, Kaplan filed his Complaint in Arbitration with Judicial Arbitration and Mediation Service in Orange, California. Kaplan mailed the Complaint in Arbitration to Debtor's attorneys for the first time on August 31, 2020. The Complaint in Arbitration does not contain any of the claims on which Kaplan's Proof of Claim or default judgment are based, to wit, his assault, battery and false imprisonment claims. Instead, Kaplan alleges the same claims that Field Time had alleged in its Complaint in the Field Time State Court Action, along with new equitable claims seeking dissolution of Field Time and an order requiring Debtor to sell to Kaplan his interest in Field Time. Debtor filed a Motion to Dismiss the Complaint in Arbitration in the Orange County Superior Court on October 5, 2020, based in part on the fact that Kaplan's claims

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James G. Caringella and Kathleen J. Caringella

Chapter 13

violated the automatic stay in bankruptcy. Specifically, Debtor argued in his motion that Kaplan was barred from asserting derivatively the very same claims that are the subject of Field Time's dismissed Superior Court action and withdrawn Proof of Claim. Debtor further argued that this Court's Order for Relief from Stay limited Kaplan to litigating the claims reflected in his Proof of Claim, which consist solely of his claims for assault, battery and false imprisonment. Kaplan has never sought or obtained relief from stay to pursue any other claims against Debtor. On December 4, 2020, the Superior Court entered its Order denying Debtor's Motion without reaching the merits. The Superior Court found that it could not consider Debtor's Motion, due to the stay it had previously granted when it issued its order compelling arbitration of Kaplan's claims. Debtor believes he has no recourse but to seek relief directly from this Court.

2. Legal Authority

Pursuant to 11 U.S.C. 362(a), the filing of a bankruptcy petition operates as an automatic stay as to:

- (1) The commencement or continuation, including the issuance and employment of process, of a judicial, administrative or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . .

Orders for relief from stay are strictly construed. *In re Rader*, 488 B.R. 406, 413 (9th Cir. BAP 2013). An order granting relief from stay to permit a party to proceed to judgment in an action pending in state court is effective only as to claims: (1) actually pending in state court at the time the order modifying the stay is issued; or (2) that were expressly brought to the bankruptcy court's attention during the relief from stay proceedings. *In re Wardrobe*, 559 F.3d 932, 937 (9th Cir. 2009). A withdrawn claim is treated as a nullity, leaving the parties in the same position as if the claim had never been filed. *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995).

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James G. Caringella and Kathleen J. Caringella

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3. Was There A Violation of The Automatic Stay?

The short answer is probably, yes. Essentially, what Debtors are arguing is that the order for relief from stay is narrow in scope and should be narrowly construed to mean that Kaplan was only given leave to pursue his claims against Debtor, but not to pursue claims that likely belong to another entity, namely Field Time, especially since those claims were apparently withdrawn and Kaplan cannot claim any direct harm. By including Field Time's causes of action in the arbitration complaint, Debtors persuasively argue, Kaplan has violated the automatic stay by not seeking this court's authority to pursue those claims on his own behalf. Kaplan argues that the relief from stay order was intended to be broad in scope, and so the filing of an arbitration complaint incorporating Field Time's causes of action in state court could not reasonably be a violation of this court's order. Kaplan argues that the *Wardrobe* case relied on by Debtors is distinguishable because the rule as articulated in *Wardrobe* is to ensure that the parties know in advance what causes of action are covered by the relief from stay order. Kaplan asserts that the causes of action were known to both Debtors and this court because the order covered both Kaplan's and Field Time's causes of action. The court is not convinced. It seems obvious that even if the causes of action remain the same in name, if the identity of the plaintiff is changed, then it really is a new claim because the analysis of that claim will be different. Also, obviously, the defense strategy will be different based on the identity of the complainant. Thus, the court takes the view that exchanging claims even between related entities likely constitutes new causes of action for which relief from stay would, again, need to be sought so that every interested party is on notice of what the movant intends.

Kaplan concedes that there might be one new claim in the amended complaint that falls outside the relief from stay order by seeking to compel Debtor to perform his obligations under the terms of the operating agreement and turn over his 20% interest in the LLC. However, Kaplan argues that, while this claim may not have been previously asserted, this claim was by no means unknown to Debtors as it was part of Debtor's counterclaim, and so

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James G. Caringella and Kathleen J. Caringella

Chapter 13

not really "new" within the meaning of the *Wardrobe* rule. Thus, Kaplan argues, there was no violation of automatic stay, and no injunctive or declaratory relief is warranted. In the court's view, this is a close call, but Debtors are probably correct that Kaplan violated the automatic stay by alleging a new cause of action arguably not contemplated, and therefore, not explicitly covered by the relief from stay order. The court takes a dim view of litigants taking too much license with its orders, especially since relief from stay orders are to be narrowly construed. At the very least, Kaplan must have known that by alleging a new cause of action, he was risking violating the relief from stay order. As Debtors point out, Kaplan should have sought either permission or clarification from this court before proceeding with its new claim against Debtor. See *Wardrobe*, 559 F.3d at 937 ("Furthermore, in the event that a previously unforeseen cause of action becomes apparent during a trial proceeding pursuant to an order granting relief from the automatic stay, numerous avenues of relief are available to a creditor to ensure that any resulting judgment does not violate the scope of the order. A creditor could petition the bankruptcy court for relief that is broad enough to encompass the cause of action; [or] could seek an order from the bankruptcy court clarifying the relief from stay order[.]")

Kaplan also argues that this motion is procedurally defective because, under FRBP 7001(7) injunctive relief is properly brought through an adversary proceeding, not by motion. Similarly, an action seeking declaratory relief is also to be brought by adversary proceeding pursuant to FRBP 7001(9). This ensures that the usual procedural safeguards are in place. Debtors argue that this court has the power to grant the relief without an adversary proceeding under the broad authority of 11 U.S.C. §105(a). But §105 is not a free ranging charge to do equity. It is intended instead to implement powers or duties otherwise expressly stated in the Code. See *In re Hornsby*, 2013 WL 4200947 at *2 (Bankr. E.D. Cal. 2013) citing *In re Lloyd*, 37 F.3d 271, 275 (7th Cir. 1994) ("While Congress ensured that there was a statutory basis for the bankruptcy and district court judges having the authority to issue all orders necessary and proper to carry out the Bankruptcy Code, 11 U.S.C. § 105(a) is not the grant of a free ranging authority to do whatever the judge thinks should be right."). See also *Law v. Siegel*, 571 U.S. 415, 421 (2014) citing 2 Collier on Bankruptcy ¶105.01[2], p. 105-6 (16th ed. 2013) ("It is

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

Wednesday, February 17, 2021

Hearing Room

5B

3:00 PM

CONT...

James G. Caringella and Kathleen J. Caringella

Chapter 13

hornbook law that §105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.');" *American Hardwoods, Inc. v. Deutsche Credit Corporation (In re American Hardwoods, Inc.)* 885 F.2d 621 (9th Cir. 1989) ("While endowing the court with general equitable powers, section 105 does not authorize relief inconsistent with more specific law.") The court sees no reason to deviate from the rules of bankruptcy procedure. The motion also seeks an order to show cause why Kaplan and Andranian should not be held in contempt for violating the stay order and here, the court is persuaded that such relief may be warranted.

Thus, declaratory and injunctive relief will be denied as procedurally improper, but the request for an order to show cause why Kaplan and Andranian should not be held in contempt for violating this court's relief from stay orders will be granted.

The court admonishes the parties to take a step back and approach these issues practically. This court is not likely to undertake resolution of matters by litigation that are already the subject of state court proceedings. Nor is this court likely to issue orders that have a practical effect of undercutting the Superior Court's interpretations of state law, as for example may be implicated by a court's order compelling arbitration. Further, this is a Chapter 13. By definition the resources are limited, and it makes little sense to accrue a large administrative fee that would jeopardize the success of any plan. Should the court order these matters to mediation? The court will hear argument on that last point.

Deny declaratory and injunctive relief as procedurally improper. Issue OSC re violation of the stay.

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**

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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
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Wednesday, February 17, 2021

Hearing Room 5B

3:00 PM

8:20-11067 Thomas Casey Beales

Chapter 13

#17.00 Motion For Order Disallowing Claim Of Unifund CCR, LLC. Claim #23

Docket 42

Tentative Ruling:

Tentative for 2/17/21:
Sustained.

Appearance: optional

Party Information

Debtor(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
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Thursday, February 18, 2021

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 10-18-20 per order appr. stip. to con't trial dates ent. 10-6-20)**

Docket 83

***** VACATED *** REASON: CONTINUED TO 6-17-21 AT 10:00 A.M.
PER ORDER GRANTING MOTION TO CONTINUE TRIAL PURSUANT
TO LOCAL RULE 9013-1(m) ENTERED 1-27-21**

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**

Thursday, February 18, 2021

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 PRE-TRIAL CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(set from 5-13-20 s/c hrg held)**

Docket 1

***** VACATED *** REASON: RE-SCHEDULED TO 2-25-21 AT 10:00
A.M. PER COURT'S OWN MOTION**

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Friday, February 19, 2021

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)
(cont'd from 10-20-20 per order appr. stip. to con't trial dates ent. 10-6-20)**

Docket 83

***** VACATED *** REASON: CONTINUED TO 6-18-21 AT 10:00 A.M.
PER ORDER GRANTING MOTION TO CONTINUE TRIAL PURSUANT
TO LOCAL RULE 9013-1(m) ENTERED 1-27-21**

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, February 23, 2021

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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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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/1600563404>

ZoomGov meeting number: 160 056 3404

Password: 954756

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
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Tuesday, February 23, 2021

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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:

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Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, February 23, 2021

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CONT...

Chapter

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, February 23, 2021

Hearing Room 5B

10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**WILMINGTON SAVINGS FUNDSOCIETY, FSB
Vs
DEBTORS**

Docket 156

Tentative Ruling:

Tentative for 2/23/21:

This is a Chapter 7, thus "necessary to a reorganization" does not apply within the meaning of §362(d)(2). There also appears to be some equity. The question of relief of stay revolves around whether there is "cause" including lack of adequate protection within the meaning of §(d)(1). According to the Trustee, there is a settlement pending that will yield about \$300,000 for benefit of the estate which requires a transfer of the estate's interest in the property. That sounds good for the estate but there is no suggestion any of that inures to the benefit of the creditor, so "adequate protection" is not assured. So the court is tasked with deciding whether the equity slice alone amounting to about 18% (assuming these numbers) is enough to afford adequate protection. That is a close question since the usual minimum threshold is about 20%. The court is inclined to continue the stay for a limited period, say 60 days to allow consummation of the pending settlement. More than that should not be expected.

Continue.

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

**United States Bankruptcy Court
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Tuesday, February 23, 2021

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10:30 AM

CONT... Hoan Dang and Diana Hongkham Dang

Chapter 7

Movant(s):

Wilmington Savings Fundsociety,

Represented By
Sean C Ferry

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

**United States Bankruptcy Court
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Santa Ana
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Tuesday, February 23, 2021

Hearing Room 5B

10:30 AM

8:20-13493 Martha Alonso-Servin

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK NATIONAL ASSOCIATION
Vs
DEBTOR**

Docket 30

Tentative Ruling:

Tentative for 2/23/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Martha Alonso-Servin

Represented By
Joshua R Engle

Movant(s):

U.S. Bank National Association, as

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, February 23, 2021

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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 1-12-21)**

Docket 36

Tentative Ruling:

Tentative for 2/23/21:
Status?

Tentative for 1/12/21:
The court understood that the trustee was awaiting passage of the claims bar in order to determine how much of the claimed exemption in the litigation proceeds would be needed. The court was hoping for an update but has seen nothing.

Status?

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

**United States Bankruptcy Court
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Tuesday, February 23, 2021

Hearing Room 5B

11:00 AM

CONT... **Antoine A Johnson and Kelly J Johnson**
motion.

Chapter 7

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.

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).

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11:00 AM

CONT... Antoine A Johnson and Kelly J Johnson

Chapter 7

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 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

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Tuesday, February 23, 2021

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11:00 AM

CONT... **Antoine A Johnson and Kelly J Johnson** **Chapter 7**
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

**United States Bankruptcy Court
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Santa Ana
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Tuesday, February 23, 2021

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5B

11:00 AM

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

Chapter 7

#4.00 Application For Payment Of: Final Fees And/Or Expenses

RAISNER ROUPINIAN LLP, CLASS COUNSEL

FEE: \$0.00

EXPENSES: \$2,057.39

Docket 2928

Tentative Ruling:

Tentative for 2/23/21:

The fees are unopposed and so will be allowed per the settlement agreement.
Can someone please state what the exact amount is to be, expressed as a number, not a percentage?

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
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Tuesday, February 23, 2021

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
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Tuesday, February 23, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#5.00 Objection Of Chapter 7 Trustee To Claims Of Noble Americas Energy Solutions
[Claim Nos. 581, 1419, 1426 and 1452]
**(con't from 1-26-21 per order approving stip. to cont hrg on objection of
Ch. 7 Trustee to claims entered 1-25-21)**

Docket 2921

***** VACATED *** REASON: OFF CALENDAR - PER ORDER
APPROVING STIPULATION RESOLVING OBJECTION OF CHAPTER 7
TRUSTEE TO CLAIMS OF NOBLE AMERICAS ENERGY SOLUTIONS,
AND ALLOWING CLAIM NO. 1452 ENTERED 2-08-21**

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

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, February 23, 2021

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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**

Wednesday, February 24, 2021

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/1614298335>

ZoomGov meeting number: 161 429 8335

Password: 938923

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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Wednesday, February 24, 2021

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:

- NONE LISTED -

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

Wednesday, February 24, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 10-28-20)**

Docket 1

Tentative Ruling:

Tentative for 2/24/21:

Continue to coincide with hearing on disclosure on March 3, 2021 @10:00 a.m. Appearance not required.

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, February 24, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#2.00 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 10-28-20)

Docket 6

Tentative Ruling:

Tentative for 2/24/21:
Continue on same terms and conditions pending hearing on disclosure on March 3, 2021 @ 10:00 a.m.

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.

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, February 24, 2021

Hearing Room 5B

10:00 AM

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

Chapter 11

**#3.00 Application For Order Authorizing The Employment Of Counsel For The Debtors
And Debtor In Possession**

Docket 18

Tentative Ruling:

Tentative for 2/24/21:
Explanation accepted. Application approved and applicant to submit order.
Appearance: optional

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, February 24, 2021

Hearing Room 5B

10:00 AM

8:19-11525 Christopher John Windisch and Mimoza Windisch

Chapter 11

**#4.00 Application For Order Authorizing The Employment Of Counsel For The Debtors
And Debtors In Possession**

Docket 19

Tentative Ruling:

Tentative for 2/24/21:
Same as in #3; explanation accepted. Approved.
Appearance: optional

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, February 24, 2021

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#5.00 Objection to Claims Of RBS Citizens, N.A., Citizens Financial Group, Inc
(cont'd from 1-13-21 per order approvg stip. to cont. objection to claims
entered 1-06-21)

Docket 379

*** VACATED *** REASON: CONTINUED TO 3-24-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
HEARING ON DEBTOR'S OBJECTION TO CLAIMS OF RBS CITIZENS,
N.A. CITIZENS FINANCIAL GROUP, INC. ENTERED 2-22-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ron S Arad

Represented By
William H Brownstein

**United States Bankruptcy Court
Central District of California
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Wednesday, February 24, 2021

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#6.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 2-10-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-31-21 AT 10:00 A.M.
PER STIPULATION TO FURTHER CONTINUE HEARING ON INITIAL
STATUS CONFERENCE ENTERED 2-23-21**

Tentative Ruling:

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 2/10/21:
Continue as requested assuming some update on settlement efforts at hearing.

Appearance: required

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

**United States Bankruptcy Court
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10:00 AM

CONT... Bridgemark Corporation

Chapter 11

Erin E Gray
James KT Hunter
William N Lobel

**United States Bankruptcy Court
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10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

**#7.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 2-10-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-31-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 2-23-21**

Tentative Ruling:

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

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
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Wednesday, February 24, 2021

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#8.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 2-10-21)

**PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR**

Docket 53

***** VACATED *** REASON: CONTINUED TO 3-31-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 2-23-21**

Tentative Ruling:

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8 and 9. Appearance: required

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, February 24, 2021

Hearing Room 5B

10:00 AM

CONT... Bridgemark Corporation

Chapter 11

Movant(s):

Placentia Development Company,

Represented By
Robert J Pfister

**United States Bankruptcy Court
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Judge Theodor Albert, Presiding
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Wednesday, February 24, 2021

Hearing Room

5B

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 2-10-21)

Docket 54

***** VACATED *** REASON: CONTINUED TO 3-31-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 2-23-21**

Tentative Ruling:

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:

See #8 and 9.

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

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CONT... **Bridgemark Corporation**

Chapter 11

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 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,

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CONT... **Bridgemark Corporation**

Chapter 11

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 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

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Chapter 11

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 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

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Bridgemark Corporation

Chapter 11

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 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."

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CONT... **Bridgemark Corporation**

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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 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,

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CONT... **Bridgemark Corporation**

Chapter 11

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 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

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CONT... **Bridgemark Corporation**

Chapter 11

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 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 makes 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

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CONT... **Bridgemark Corporation**

Chapter 11

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 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

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Debtor.

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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 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

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CONT... **Bridgemark Corporation**

Chapter 11

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 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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8:20-10143 Bridgemark Corporation

Chapter 11

#10.00 Second Interim Application for Compensation and Reimbursement of Expenses
For Period: 8/1/2020 through 11/30/2020:

**PACHULSKI STANG ZIEHL & JONES LLP AS GENERAL BANKRUPTCY
COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION**

FEE: \$164,873.00

EXPENSES: \$5,655.12

Docket 360

Tentative Ruling:

Tentative for 2/24/21:
Allow as prayed.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray
Matthew J Pero

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#11.00 Second Interim Application for Compensation and Reimbursement of Expenses
For Period: 6/1/2020 Through 11/30/2020

**CASSO & SPARKS, LLP AS SPECIAL OIL & GAS COUNSEL FOR THE
DEBTOR AND DEBTOR IN POSSESSION**

FEE: \$5,611.00

EXPENSES: \$0.00.

Docket 361

Tentative Ruling:

Tentative for 2/24/21:
Allow as prayed.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray
Matthew J Pero

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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: 2/24/2020 to 4/30/2020:

**NUMERIC SOLUTIONS, LLC, AS EXPERT VALUATION CONSULTANT AND
JOHN HARRIS AS EXPERT WITNESS TO THE DEBTOR AND DEBTOR IN
POSSESSION**

FEE: \$27,435.00

EXPENSES: \$357.07

Docket 362

Tentative Ruling:

Tentative for 2/24/21:
Allowed as prayed.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray
Matthew J Pero

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

Wednesday, February 24, 2021

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#13.00 Objection Of Placentia Development Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 2-10-21)

Docket 93

***** VACATED *** REASON: CONTINUED TO 3-31-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS
ENTERED 2-23-21**

Tentative Ruling:

Tentative for 2/24/21:
Should this be continued as in #s 6-9?

Tentative for 2/10/21:
See #8 and 9.

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

Thursday, February 25, 2021

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/1611154146>

ZoomGov meeting number: 161 115 4146

Password: 532765

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, February 25, 2021

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, February 25, 2021

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, February 25, 2021

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 12-03-20)

Docket 83

Tentative Ruling:

Tentative for 2/25/21:
Status?

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?

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Tentative for 6/8/17:

Status conference continued to September 7, 2017 at 10:00 a.m. with expectation that involuntary proceeding will be clarified and settlement examined.

Tentative for 2/9/17:

Status Conference continued to May 25, 2017 at 10:00 a.m. Personal appearance not required.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By

Robert P Goe

Jeffrey S Benice

Carlos F Negrete - INACTIVE -

Defendant(s):

Estancia Atascadero Investments,

Pro Se

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Pinnacle Peak Investors, LLC	Pro Se
Provo Industrial Parkway, LLC	Pro Se
South 7th Street Investments, LLC	Represented By Jonathan Shenson
Spanish and Colonial Ladera	Pro Se
Summerwind Investors, LLC	Pro Se
Van Buren Investors, LLC	Pro Se
White Mill Lake Investments, LLC	Pro Se
Richard K. Diamond, solely in his Park Scottsdale, LLC	Pro Se
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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

M. Gwen Melanson	Represented By Nancy A Conroy
RENE ESPARZA	Represented By Nancy A Conroy
DOES 1-30, inclusive	Pro Se
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
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Trustee(s):

Howard B Grobstein (TR)	Represented By Rodger M Landau Roye Zur Kathy Bazoian Phelps
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

John P Reitman
Robert G Wilson - SUSPENDED -
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein
Jack A Reitman

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

Thursday, February 25, 2021

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 12-03-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO SEPTEMBER 2, 2021 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 2-24-2021 - (DOCKET NO. [132])**

Tentative Ruling:

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice
Carlos F Negrete

Defendant(s):

NATIONAL FINANCIAL

Pro Se

Plaintiff(s):

Howard Grobstein, as Chapter 7

Represented By
Roye Zur

Trustee(s):

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roye Zur
Kathy Bazoian Phelps
John P Reitman

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

- #3.00** 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 12-10-20)
[another summons issued on 12-30-20 with the same s/c date per Amna]
[another summons issued on 1-11-21 with same s/c date per Amna]

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-22-2021 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE STATUS
CONFERENCE ENTERED 2-22-21.**

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.

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Jee Hyuk Shin

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 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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Insook Shin	Pro Se
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Seafresh Restaurant	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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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, February 25, 2021

Hearing Room 5B

10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01093 Romex Textiles, Inc. v. Kim

**#4.00 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 1-28-21)**

Docket 1

Tentative Ruling:

Tentative for 2/25/21:
Status? Default entered?

Appearance: optional

Tentative for 1/28/21:
Status on entry of default? Appearance: optional

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Katie Ki Sook Kim

Chapter 7

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

Adv#: 8:20-01097 AEPC Group, LLC v. SLATE ADVANCE

- #5.00** 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 1-07-21)**

Docket 1

Tentative Ruling:

Tentative for 2/25/21:
Per request continue to April 22, 2021 @ 10:00 a.m.

Tentative for 1/7/21:
In view of late status report, continue to February 25, 2021 at 10:00 a.m.

Appearance: required.

Tentative for 10/29/20:
Continue per request to January 7, 2021 @ 10:00. If not resolved the court

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... AEPC Group, LLC

Chapter 11

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
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, February 25, 2021

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

#6.00 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 1-28-21)

Docket 1

Tentative Ruling:

Tentative for 2/25/21:
What is status of default judgment application?

Tentative for 1/28/21:
Status on filing of motion supporting default judgment? Appearance: optional

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Heather Huong Ngoc Luu

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, February 25, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01131 OneSource Distributors, LLC v. Dang et al

**#7.00 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)
(cont'd from 1-14-21 per order approving stip. to cont. s/c entered 12-16-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
RESPOND TO THE COMPLAINT ENTERED 2-16-21**

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Hoan Dang

Arturo M Cisneros
James C Bastian Jr

Chapter 7

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01133 Toll Bros, Inc. v. Dang et al

**#8.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(cont'd from 1-14-21 per order approving stip. to cont s/c entered 12-16-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 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 2-18-21**

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

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

Thursday, February 25, 2021

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, February 25, 2021

Hearing Room 5B

10:00 AM

8:20-12332 Christine Carlin

Chapter 7

Adv#: 8:20-01162 Jason Frank Law PLC, a professional law corporatio v. Carlin

#9.00 STATUS CONFERENCE RE: Complaint For: (1) Determination Of Non-Dischargeability Of Debt; (2) Determination Of Non-Dischargeability Of Debt

Docket 1

Tentative Ruling:

Tentative for 2/25/21:
See #23 @ 11:00 a.m.

Deadline for completing discovery: November 1, 2021
Last date for filing pre-trial motions: Nov. 19, 2021
Pre-trial conference on: Dec. 2, 2021 @ 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Christine Carlin

Represented By
Misty A Perry Isaacson

Defendant(s):

Christine Carlin

Pro Se

Plaintiff(s):

Jason Frank Law PLC, a

Represented By
Timothy C Aires

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 25, 2021

Hearing Room 5B

10:00 AM

8:20-12473 Matthew Vy Cuong Bui

Chapter 7

Adv#: 8:20-01166 Duong et al v. Bui et al

#10.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt

Docket 1

Tentative Ruling:

Tentative for 2/25/21:
Deadline for completing discovery: June 1, 2021
Last date for filing pre-trial motions: June 18, 2021
Pre-trial conference on: July 1, 2021 @ 10:00AM
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Matthew Vy Cuong Bui

Represented By
Joseph M Adams

Defendant(s):

Matthew Vy Cuong Bui

Pro Se

Diversifive LLC

Pro Se

Plaintiff(s):

Bryant Duong

Represented By
Naveen Madala

Bryan Koy

Represented By
Naveen Madala

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, February 25, 2021

Hearing Room 5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 11

Adv#: 8:13-01278 Grobstein v. Harkey et al

#11.00 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 10-29-20 per order approving stip. to cont. pre-trial conference and all other dates entered 10-23-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - FINAL JUDGMENT
ON PORTION OF CLAIM FOR AVOIDANCE OF ACTUAL
FRAUDULENT TRANSFER TO DEFENDANT CALCOMM CAPITAL,
INC. RE: MOTION FOR SUMMARY JUDGMENT ENTERED 11-03-20**

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 11

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

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

Thursday, February 25, 2021

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.

**#12.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(set from s/c hrg held on 9-24-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER
DISMISSING ADVERSARY PROCEEDING WITH PREJUDICE
ENTERED 2-16-21**

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

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

Thursday, February 25, 2021

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, February 25, 2021

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.

**#13.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(set from s/c hrg held on 9-24-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 2-16-21**

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

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

Thursday, February 25, 2021

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.

**#14.00 PRE-TRIAL CONFERENCE RE: Complaint to Avoid and Recover Preferential Transfer(s) Pursuant to 11 USC Sections 547 and 550
(set from s/c hrg. held on 9-24-20)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
ADVERSARY PROCEEDING WITH PREJUDICE ENTERED 2-16-21**

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

8:17-12900 Harv Wyman

Chapter 7

Adv#: 8:19-01171 NAYLOR v. THE EVERGREEN ADVANTAGE, LLC et al

#15.00 PRE-TRIAL 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)
(set from s/c hrg held on 2-27-20)
(con't from 1-28-21 per order appr. stip. ent. 11-20-2020)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-22-21 AT 10:00 A.M.
PER ORDER APPROVING SECOND STIPULATION TO MODIFY
SCHEDULING ORDER ENTERED 2-16-21**

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Harv Wyman Chapter 7

RUFFIN ROAD VENTURE LOT 6 Pro Se

BOMOR ENTERPRISES, LLC Pro Se

Joint Debtor(s):

Kim M. Wyman Represented By
Thomas J Polis

Plaintiff(s):

KAREN SUE NAYLOR Represented By
William Malcolm

Trustee(s):

Karen S Naylor (TR) Represented By
Christina J O
Arturo M Cisneros

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

Thursday, February 25, 2021

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

**#16.00 PRE-TRIAL CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(set from 5-13-20 s/c hrg held)
(re-scheduled from 2-18-21 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for 2/25/21:

What is status of stipulation to consolidate adversary proceedings? Continue SC about 30 days for that to occur.

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

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets
accessible during the hearing.

Chapter 11

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

Thursday, February 25, 2021

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

#17.00 PRE-TRIAL 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
(cont'd from 7-23-20)

Docket 1

Tentative Ruling:

Tentative for 2/25/21:
Why no status report from remaining parties?

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.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

West Coast Business Capital LLC

Pro Se

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... i.i. Fuels, Inc.
Vernon Capital Group LLC

Pro Se

Chapter 7

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, February 25, 2021

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

#18.00 PRE-TRIAL 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
(set from s/c hrg held on 7-23-20)

Docket 1

Tentative Ruling:

Tentative for 2/25/21:

Status? Some parties have been dismissed yet some remain. Why no status report? Appearance: required

Tentative for 7/23/20:

Same schedule as #10.

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall LLC, a New York Limited

Pro Se

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... i.i. Fuels, Inc. Chapter 7

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC

#19.00 PRE-TRIAL 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
(set from s/c hrg held on 7-23-20)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - STATUS
CONFERENCE SET FOR 3/11/21 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Thursday, February 25, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01143 Marshack v. Mantis Funding LLC

#20.00 PRE-TRIAL 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
(set from s/c hrg held on 7-23-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-04-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION REGARDING PRE-TRIAL
DEADLINES AND TO CONTINUE ANY PRE-TRIAL CONFERENCE
DATE ENTERED 2-12-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Mantis Funding LLC

Represented By
Howard Steinberg

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 25, 2021

Hearing Room 5B

10:00 AM

CONT... **i.i. Fuels, Inc.**

Chapter 7

Rafael R Garcia-Salgado

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Thursday, February 25, 2021

Hearing Room

5B

11:00 AM

:

Chapter 0

Adv#: 8:98-01650 Laguardia v. Tamura

#21.00 Laguardia's Motion To Compel Responses To Post - Judgment Discovery Requests For Production And Interrogatories; Request For Monetary Sanctions Of \$1,520.00

Docket 357

Tentative Ruling:

Tentative for 2/25/21:

Debtor seems to concede that her response to this motion is late but asserts that her response was hampered due to difficulty accessing her mailbox in her mobile home park. Debtor argues that since she has not had contact with Plaintiff for more than a decade, responding to his discovery requests will take time as many documents have either been misplaced or lost. Somewhat confusingly, Debtor states that she has attempted to answer Plaintiff's discovery requests to the extent she is able. However, Plaintiff is adamant that no responses to his discovery requests have been received as of the filing of his reply (2/19). Plaintiff also points out that, while he appreciates that it might take some time to gather old documents, these discovery requests were propounded back in November of 2020. Unfortunately, Debtor has not put forth any evidence that she has complied or attempted to comply with the discovery requests despite the statement in her response. Thus, it is appropriate for this court to compel such responses.

On the question of sanctions, Plaintiff points out that if a party fails in its opposition to a motion to compel, a sanction is required under California Code of Civ. Proc. §§ 2030.290, subd. (c); 2031.300, subd. (c.) and pursuant to FRCP, Rule 37, subsection (a)(5)(D), unless the Court finds good cause why sanctions should not be imposed. Here, there seem to be several mitigating factors against imposing the proposed sanction of \$1,520 (the cost of preparing this motion), at this time. First, the case is quite old, and Debtor very well might not have access to the requested information anymore. Second, Debtor is unrepresented and thus, may not fully comprehend what is being asked of her. Third, again, as Debtor is pro se, she may not be able to afford to pay the sanction without incurring undue hardship. Of course, only

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, February 25, 2021

Hearing Room 5B

11:00 AM

CONT...

Chapter 0

the first consideration is addressed in Debtor's response; the other two are speculation based upon information in the record. Defendant should understand that she is required to make her full, good faith effort to respond to the discovery, and if unable, she needs to go on record under penalty of perjury that such is the case and carefully outline all efforts made. It is unacceptable to simply fail to respond.

The better part of valor at this junction is to grant the motion but withhold imposition of monetary sanctions unless and until Debtor fails to comply. Plaintiff is correct that by the time this motion is heard, approximately three months will have elapsed since the discovery requests were made. That should be ample time for Debtor to locate the information sought by the discovery requests and/or to catalogue the efforts made. Thus, Debtor will be compelled to respond to the discovery requests within 30 days of the order pending further hearing shortly thereafter to evaluate efforts made and to consider again imposition of monetary sanctions.

Grant motion to compel within thirty days of entry and schedule continued hearing April 8 @ 11:00AM to evaluate compliance and consider whether monetary sanctions are appropriate.

Party Information

Defendant(s):

Dayle Momi Tamura

Represented By
Stephen D Johnson

Plaintiff(s):

James Laguardia

Represented By
Eric Ridley
Gordon A Petersen

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

Thursday, February 25, 2021

Hearing Room 5B

11:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

- #22.00** Motion to Compel Further Responses to Request for Admission, and to Compel Further Production of Documents, as to Defendant, Scott Tucker; Request for Sanctions
(cont'd from 1-14-21 per order approving stip. to con't plaintiff's mtn to compel further responses to admission and production of documents entered 1-12-21)

Docket 10

Tentative Ruling:

Tentative for 2/25/21:

The main issue in this motion to compel discovery and for sanctions here is whether Plaintiff has met the procedural requirements under LBR 7026-1, which must be satisfied before filing a motion relating to discovery.

Local Bankruptcy Rule 7026 –1(c)(2) states: “Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.” Furthermore, “[i]f the parties are unable to resolve their dispute, then Local Bankruptcy Rule 7026–1(c)(3) requires that the party seeking discovery must submit with the cooperation of the other party a discovery dispute stipulation in one document identifying separately and with particularity each disputed issue that remains to be determined by the court and the contentions and points and authorities of each party. In the absence of this stipulation or a declaration of lack of noncooperation of the other party, the court will not consider the discovery motion.” *In re Marti*, No. 2:16-AP-01270-RK, 2017 WL 2312850, at *1 (Bankr. C.D. Cal. May 26, 2017). Strict adherence to this rule has been required by several courts in this jurisdiction, which have declined to consider discovery motions for failure to satisfy these requirements. See *Id.*;

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, February 25, 2021

Hearing Room

5B

11:00 AM

CONT...

Scott A. Tucker

Chapter 7

see also *In re Farris-Ellison*, No. 2:11-BK-33861-RK, 2015 WL 3955234, at *2 (Bankr. C.D. Cal. June 26, 2015).

Plaintiff attempts to put all the blame on Defendant's actions for delays resulting in the inability to complete the meet-and-confer and the stipulation of the parties, but it seems Plaintiff is also at fault here. First, the Court's Scheduling Order was entered on August 20, 2020, but Plaintiff did not send the discovery requests to Defendant until October 15, 2020. Additionally, due to clerical error and contested service, the discovery requests were not personally served until October 30, 2020.

Subsequently, Plaintiff's fatal mistake was waiting until December 7, 2020 to correspond with Defendant again, when Plaintiff emailed a Meet and Confer Letter. See Exhibit 1 emails. Under LBR 7026-1(c)(2), this gave Defendant until December 14, 2020 to comply with the meet-and-confer, which is 3 days after the December 11, 2020 deadline set by the Court for filing pre-trial motions in this case. Thus, instead of reacting sooner to Defendant's inadequate and untimely discovery responses, which would have left enough time to satisfy the procedural requirements of LBR 7026-1(c), Plaintiff unfortunately waited to send the Meet-and-Confer Letter until it was practically impossible to conduct a meet-and-confer and prepare a stipulation by the parties before the pre-trial motion deadline. Moreover, Plaintiff did so even with the knowledge that gamesmanship and delay "is the typical behavior of Defendant."

Plaintiff seems to believe that the email communications that took place from December 9-10 constitute a meet-and-confer, but this likely fails to meet LBR 7026-1(c) requirements where "counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute." But even if this were considered to constitute a meet-and-confer, there was certainly no attempt to write a stipulation by the parties as required by LBR 7026-1(c)(3). See Exhibit 1 emails.

Therefore, Plaintiff failed to meet the requirements of LBR 7026-1(c), and the court will decline to consider Plaintiff's motion on the merits at this time. However, it is fairly clear that Defendant has been less than cooperative

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, February 25, 2021

Hearing Room

5B

11:00 AM

CONT... **Scott A. Tucker**

Chapter 7

in producing the requested discovery, and is getting by on a technicality here. That maybe works once. Defendant's only excuse for untimely discovery production is "severe economic complications for the Defendant (the Defendant/Debtor is the owner/operator of a restaurant/bar in Huntington Beach, and the government mandated lockdowns, and thus he has had to scramble to maintain a skeleton staff at his business . . ." and Defendant does not even address the extreme failure to produce identified documents alleged by Plaintiff. Economic pressures are not a cognizable excuse for failure to provide discovery.

Thus, it is in the interest of justice for the court to consider extending the deadlines for discovery and pre-trial motions, and to continue this motion to allow one more chance to comply with the required procedures under LBR 7026-1. Both sides are admonished not to test the court further as the question of sanctions remains.

Deny at this time pending further hearing in about 60 days. The court will hear argument as to appropriate extensions of the scheduling order.

Party Information

Debtor(s):

Scott A. Tucker

Represented By
Thomas J Polis

Defendant(s):

Scott Tucker

Represented By
Thomas J Polis

Plaintiff(s):

Scott Churilla

Represented By
Stephanie N West

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 25, 2021

Hearing Room

5B

11:00 AM

8:20-12332 Christine Carlin

Chapter 7

Adv#: 8:20-01162 Jason Frank Law PLC, a professional law corporatio v. Carlin et al

#23.00 Motion To Dismiss Adversary Proceeding Counter/Cross-Claims For Failure To State A Claim Upon Which Relief can be Granted **[F.R.C.P. Rule 12(b)(6)]**

Docket 8

Tentative Ruling:

Tentative for 2/25/21:

This is counter/cross defendants Jason Frank Law PLC's and Jason Frank's (Mr. Frank or collectively "Franks") motion to dismiss the counterclaims brought by debtor and counter/cross claimant Christine Carlin ("Ms. Carlin" or "Debtor") for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Debtor opposes the motion.

1. Factual Background

Debtor filed these counterclaims against the Franks for damages related to several alleged breaches of her privacy including, but not limited to, third parties impersonating her in phone calls to US Bank and Capital One and obtaining her private banking information. Debtor also alleges that a third party impersonated her husband in a call to Volkswagen Credit. Additionally, the party allegedly impersonating Debtor attempted to break into online accounts including her American Express and Capital One accounts. Based on the context, timing, and facts surrounding these alleged privacy breaches, Debtor believes they were perpetrated by Mr. Frank and/or his agents at his direction and on his behalf. These alleged intrusions all occurred shortly after the Superior Court signed Mr. Frank's turnover order on January 9, 2020 as follows:

Date and alleged occurrence:

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

Thursday, February 25, 2021

Hearing Room

5B

11:00 AM

CONT...

Christine Carlin

Chapter 7

December 2019 Mr. Frank files a motion to compel production of Ms. Carlin's bank records.

January 7, 2020 Superior Court grants Franks' Proposed Turnover Order requiring Ms. Carlin to turn over money Transferred to her by her former husband, Michael Avenatti ("Avenatti").

January 9, 2020 Superior Court signs order denying Mr. Frank's motion to compel Ms. Carlin to turn her bank records over to him.

January 9, 2020 Superior Court signs Mr. Frank's proposed turnover order requiring Ms. Carlin to turnover money transferred to her from Avenatti.

January 9, 2020 (2:11 P.M.) Imposter attempts access to Ms. Carlin's American Express Online Account.

January 9, 2020 (2:48 P.M.) Imposter calls US Bank pretending to be Ms. Carlin and obtains personal banking information.

January 10, 2020 Imposter calls Volkswagen Credit pretending to be Mr. Carlin and obtains information on his bank accounts including the USAA Account.

January 11, 2020 Imposter calls Capital One pretending to be Ms. Carlin.

February 28, 2020 Mr. Frank obtains a levy on the USAA account.

March 2020 Mr. Frank executes a levy on the USAA account that he or his agents learned of by impersonating call to Volkswagen.

Debtor also brings these counterclaims to recover damages for the Franks' alleged misuse of collection procedure by treating the turnover order

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as license to use whatever collection methods Mr. Frank deemed most expedient in recovering assets in which Avenatti might have had an interest. Debtor argues the proper remedy for non-compliance with a turnover order is a sanction by court order, not aggressive and possibly unlawful collection activity. Debtor maintains that she never violated the turnover order. Debtor asserts that these alleged collection activities have caused damages in the form of emotional distress and loss of funds that were not the subject of the turnover order.

Based on the factual allegations above, the counterclaims contain the following causes of action:

- (1) Unlawful Intrusion into Private Affairs;
- (2) Violation of Common Law Right of Privacy.
- (3) Violation of Constitutional Right of Privacy, Article 1 §1 of the California Constitution.
- (4) Violation of Business and Professions Code §17200; and
- (5) Abuse of Process

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

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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*.

3. Are the Counterclaims Barred by The Litigation Privilege?

Franks argue that all of Debtor's counterclaims are barred by the litigation privilege provided in Cal. Civ. Code §47. They are likely correct.

"The privilege created by Civil Code section 47, though part of the statutory law dealing with defamation, has evolved through case law application into a rather broad protective device which attaches to various classes of persons and applies to types of publications and in types of actions not traditionally identified with the field of defamation." *Rosenthal v. Irell & Manella*, 135 Cal. App. 3d 121, 125 (1982). "The absolute privilege attaches to any publication that has any reasonable relation to the action and is made to achieve the objects of the litigation, even though published outside the courtroom and no function of the court or its officers is involved." *Id.* at 126 citing *Pettit v. Levy*, 28 Cal.App.3d 484, 489 (1972). The privilege also extends to *communications*, not just publications, that have "some relation" to

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a judicial proceeding. *Rubin v. Green*, 4 Cal. 4th 1187,1193 (1993); *Finton Construction Inc. v. Bidna & Keys APLC*, 238 Cal.App.4th 200, 211 (2015). "The initial departure from limiting the privilege to defamation actions came in *Albertson v. Raboff* 46 Cal.2d 375 [295 P.2d 405] (1956), where it was held that the privilege would serve to bar an action for disparagement of title based on the filing of a *lis pendens*." *Rosenthal*, 135 Cal. App. 3d at 125. Since then, "it has been applied to defeat tort actions based on publications in protected proceedings but grounded on differing theories of liability, to wit, abuse of process...intentional infliction of mental distress... fraud and negligence[.]" *Id.* (internal citations omitted). Statutory claims brought under Business and Professions Code §17200 are covered by §47. *Rubin*, 4 Cal. 4th at 1201-02. "[T]he litigation privilege bars all tort causes of action except malicious prosecution." *Jacob B v. County of Shasta*, 40 Cal. 4th 948, 960 (2007) citing *Kimmel v. Goland*, 51 Cal.3d 202, 209 (2002); *Silberg v. Anderson*, 50 Cal.3d 205, 215 (1990); and *Ribas v. Clark*, 38 Cal.3d 355, 365 (1985). "[T]he litigation privilege applies even to a constitutionally based privacy cause of action." *Jacob B v. County of Shasta*, 40 Cal. 4th at 961. "Obviously, if section 47(b) conflicted with California Constitution, article I, section 1, the statute would have to yield to the Constitution." *Id.* "But the statutory and constitutional provisions are not in conflict; they can and do coexist." *Id.* "[W]e are not aware of... [any authority relating to] the constitutional right to privacy that suggested any intent to limit the scope of this preexisting privilege or to create a right of privacy that would prevail over the privilege." *Id.* "The constitutional right to privacy has never been absolute; it is subject to a balancing of interests." *Id.* "Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest." *Id.* citing *Hill v. National Collegiate Athletic Assn.* 7 Cal.4th 1, 37-38 (1994). "Among the competing interests against which the privacy right must be balanced is the longstanding litigation privilege." *Jacob B v. County of Shasta*, 40 Cal. 4th at 962. "In adopting the litigation privilege, the *Legislature* has already done the balancing." *Id.* (Italics in original) "Litigants and witnesses could never be free of 'fear of being harassed

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subsequently by derivative tort actions' if the privilege applied only in some cases but not others." *Id.* (internal citation omitted). "This policy caused us to conclude that the litigation privilege bars all common law and statutory causes of action for invasion of privacy." *Id.* "It applies equally to a constitutionally based cause of action for invasion of privacy. The same compelling need to afford free access to the courts exists whatever label is given to a privacy cause of action." *Id.* The privilege cannot and should not be disregarded simply by pleading around the statute. *Id.*

Here, Debtor attempts to distinguish this case from the cases cited above, mainly *Ribas* and *Jacob B.* For example, Debtor notes that in *Ribas*, the court found that the litigation privilege applied only to statements made in an arbitration hearing, not to illegal eavesdropping. Debtor argues that eavesdropping is analogous to Mr. Frank allegedly impersonating her to gain access to her financial records. But the court notes that the penal code sections (Penal Code §§ 631 and 637.2) implicated in *Ribas* explicitly provided for a monetary remedy for victims of violations of that chapter (\$3,000 [now \$5,000] or three times victim's actual damages, whichever is greater) and an avenue to bring forth an action to recover those damages. *Ribas*, 38 Cal. 3d at 364 citing Penal Code §637.2. Debtor's attempts to distinguish the facts do not convince the court that her causes of action fit within the extremely narrow exceptions to Cal. Civ. Code §47. Indeed, the caselaw instructs the court to find that the litigation privilege is a bar against *all* tort actions except malicious prosecution. Debtor's only real hope of preserving her tort causes of action are to argue that Mr. Frank's alleged conduct does not qualify as a communication having at least "some relation" to a judicial proceeding. It seems rather obvious that, even if Debtor's allegations are true, Mr. Frank was attempting to gain information from Debtor's financial institutions subject to a turnover order. Thus, such conduct would appear to have "some relation" to a judicial proceeding. Normally, as this is a Rule 12(b)(6) motion, all doubts are to be resolved in favor of Debtor as the nonmovant. However, relevant caselaw also instructs the court to resolve doubts in favor of applying the litigation privilege. See *Finton*

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Construction Inc., 238 Cal.App.4th at 212 ("Any doubt about whether the privilege applies is resolved in favor of applying it. [Citation.]").

The court is not unsympathetic to Debtor's grievances, and the allegations, taken as true, are quite shocking and almost certainly not countenanced by any order of any court. They may also violate ethical constraints upon lawyers. However, courts in California seem to have decided that even tort actions based upon common law or constitutional violations of privacy interests must yield to the litigation privilege and the policy interests contemplated by Cal. Civ. Code §47. Debtor is not without remedies. For example, although her tort actions may be barred, there does not seem to be any barrier to seeking an order to show cause for sanctions from the court who issued the turnover order, which would possibly force Mr. Frank to either deny or justify his alleged actions. After all, it would seem an absurd result to give litigants free reign to behave unlawfully so long as their misconduct had some tenuous connection to a judicial proceeding. Unfortunately for Debtor, both the legislature and the courts have decided that in situations such as this, causes of action in tort are generally not maintainable.

It is plausible that Mr. Frank's alleged conduct implicates at least one criminal statute (Penal Code §530.5(c)(1)) [identity theft]. Unfortunately, Debtor did not include that as a cause of action in her counterclaim and the alleged violation of that penal statute only appears in her opposition to this motion. Debtor also does not cite any direct authority that alleged violations of Penal Code §530.5(c)(1) are immune from the litigation privilege, or even that victims have standing to prosecute thereunder whether criminally or civilly. As noted earlier, the *Ribas* court, analyzing whether a violation of Penal Code § 637.2 might be immune from the litigation privilege in Cal. Civ. Code. §47, noted that §637.2 explicitly included a monetary remedy for victims and an avenue to bring such claims. No such monetary remedy is provided for in § 530.5(c)(1), or anywhere else in the statute. The statute does provide for fines, but the court does not read that to equate to a remedy for victims in the same way as §637.2. A violation of Penal Code §530.5(c)(1) may be the sole

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province of the District Attorney. But, as the causes of action are pled as torts, Debtor's counterclaim must fail as barred by the far-reaching litigation privilege covered by Cal. Civ. Code §47. Moreover, the court does not see how it can be amended to cure this deficiency so leave to amend is denied.

Grant without leave to amend.

Party Information

Debtor(s):

Christine Carlin

Represented By
Misty A Perry Isaacson

Defendant(s):

Christine Carlin

Represented By
Brian C Carlin

Plaintiff(s):

Jason Frank Law PLC, a

Represented By
Timothy C Aires

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

#24.00 Motion For Entry Of Default Judgment

Docket 33

Tentative Ruling:

Tentative for 2/25/21:
Grant.

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
Tinho Mang

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#25.00 Trustee's Motion To Approve Settlement And Subordination Agreement With Remares Global, LLC re Rimmele Drive Property

Docket 261

Tentative Ruling:

Tentative for 2/25/21:

This is the chapter 7 Trustee, Richard Marshack's ("Trustee") motion to approve settlement and subordination agreement with Remares Global, LLC ("Remares") regarding the proposed sale of the Rimmele Drive property. The motion has drawn a limited opposition from creditor Vibe Micro, Inc. ("Vibe Micro").

The Agreement resolves the scope and extent of Remares' disputed lien against the real property located at 9875 Rimmele Drive, Beverly Hills, CA 90210 ("Property") and will allow the Trustee to sell the Property for the benefit of the Estate. Trustee is avoiding and recovering the Property which Debtor fraudulently transferred. The Property is subject to a first-in-priority deed of trust securing a bank loan in the original, principal amount of \$900,000. The Property is also subject to Remares' alleged judgment lien arising from the recordation of an abstract of judgment after Debtor fraudulently transferred the Property to an irrevocable trust settled for the benefit of his children. Remares contends that fraudulent transfers are void ab initio and, as such, its judgment lien attached to the Property notwithstanding the transfer. The Trustee disputes this contention and believes that the estate's powers to avoid, recover, and preserve fraudulent transfers prevents any such lien from arising to the detriment of unsecured creditors.

To resolve this dispute, the parties have entered into an agreement which provides that Remares will have a secured claim but that such claim will be partially subordinated for the benefit of the estate. Specifically, the partial subordination will be in the amount equal to the following:

A. Costs of sale including brokerage commissions;

B. Attorneys' fees incurred by the Estate to recover and liquidate the Property;

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C. 50% of the first \$200,000 in Net Proceeds (defined in the Agreement) for the benefit of the Estate; and

D. 30% of all other Net Proceeds after the first \$200,000 in Net Proceeds, until the Estate receives \$200,000 in the aggregate of the Net Proceeds (which aggregate amount does not include the amount subordinated to customary costs of sale, broker's commissions, attorneys' fees for liquidating the Property, and the Trustee's compensation).

Trustee concedes that because the Property is an undeveloped parcel of land, estimating a sale price may be difficult depending on factors such as zoning and other building restrictions in the zip code. In any case, Trustee is confident that any sale price will be sufficient to pay off the senior secured creditor.

The motion has drawn a late limited opposition from creditor Vibe Micro. Vibe Micro reports that it has filed a complaint seeking to either equitably subordinate or recharacterize Remares' claim. As such, Vibe Micro requests that, if the court is inclined to grant this motion, the court also order the Trustee to hold any payment that might otherwise be distributed to Remares until Vibe Micro's challenges to Remares' claim can be adjudicated on their merits. Vibe Micro also notes that the motion is technically deficient due to an oversight in the motion. Exhibit 1 to the motion is a different agreement belonging in another case (Ruby's Diner). Although Trustee did provide a Notice of Errata, and provided the correct subordination agreement, Vibe Micro asserts that by the time this was done, there were only 9 days before the hearing, which is insufficient notice under LBR 9013-1(c)(3)(A) (21 days required).

Vibe Micro concedes that its limited opposition is also untimely but asserts that it was due to a very recent substitution of counsel. The limited opposition was filed only 3 days prior to the hearing, which gives Trustee and Remares very little time to respond (neither of them have responded as of this writing). It is quite possible that the limited opposition can be resolved at the hearing as Vibe Micro's request seems reasonable. In any case, due to the technical deficiency of the motion, it should probably be continued for a brief

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period so that the interested parties have a proper opportunity to assess the motion.

The court finds that the proposed settlement as between Remares and the estate is reasonable and would be approved absent the Vibe Micro objection. However, the court is not inclined to elevate Remares' claim to lien status absent adjudication of the Vibe Micro issues. So, the court will hear argument as to whether the agreement can be modified to be contingent on results of Vibe Micro's action, or to simply continue the hearing.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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8:19-14912 Igor Shabanets

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#25.10 Motion for Determination that Centers for Disease Control Eviction Moratorium Does Not Apply to Turnover of Bankruptcy Estate Property and Issuance of Revised Writ of Assistance re: 2 Monarch Cove, Dana Point, CA
(OST Signed 2-17-21)

Docket 269

Tentative Ruling:

Tentative for 2/25/21:

The CDC order does not appear to deprive this court of jurisdiction, nor does it nullify or moot the existing turnover order. As with the Trustee, the court was only able to locate one case more or less on point. The case is *In re Machevsky*, 2021 LEXIS 31 (Bankr. C.D. Cal. Jan. 8, 2021). *In Machevsky*, Judge Kwan held that an older but similar CDC Order and corresponding state legislation (AB 3088) did not apply to the debtor in question because he was not a "covered person" meaning he was not a renter facing eviction for nonpayment of rent, small business owner, or homeowner who is struggling to make rent or mortgage payments due to Covid-19. *Id.* at *10-12. Thus, Judge Kwan held that the CDC Order and AB 3088 did not override the turnover order.

Here, the court will follow Judge Kwan's reasoning. To date, Debtor has not filed a sworn declaration that he can meet the requirements outlined in the CDC Order to avail himself of its protection. Pursuant to the CDC Order, a "covered person" is any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury that:

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2020 to the U.S. Internal

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Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;

(4) The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and

(5) Eviction would likely render the individual homeless— or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options. CDC Order, p. 1-2

As the list is conjunctive, Debtor would need to be able to demonstrate all five of these requirements.

Trustee also points out that the CDC Order lists exempt causes for eviction:

- (1) engaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- (5) violating any other contractual obligation of a tenant's lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest). CDC Order, p. 5

Trustee persuasively argues that #3 and #5 are implicated. Debtor's continued occupancy carries a real risk of damage to the property the longer Debtor is allowed to stay. Debtor is also statutorily obligated to turn over the property to the trustee pursuant to 11 U.S.C. § 521(a)(3)-(4). These may not be contractual obligations, but by filing a voluntary petition, Debtor placed his

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assets under the jurisdiction of this court. Furthermore, the turnover order is not the result of nonpayment of rent or mortgage due to loss of income attributable to the COVID-19 pandemic. Also, Trustee is not and will not be acting as a landlord for the property and so it is not “residential property” within the meaning of the order. For these reasons, Debtor is likely outside the purview of the CDC Order and this court is not deprived of jurisdiction.

Grant, reaffirm turnover and assistance orders.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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8:13-19732 Steven William Gentile

Chapter 11

#26.00 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)
(cont'd from 1-28-21 per order approving stip. to cont. p/t conf. hrg. entered 1-26-21)

Docket 0

*** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION OF REORGANIZED DEBTOR FOR ORDER CLOSING CASE
[ECF DOCKET NO. 433] ENTERED 2-22-21

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

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8:13-16402 Gentile Family Industries

Chapter 11

Adv#: 8:20-01126 GENTILE FAMILY INDUSTRIES v. Gentile, Sr. et al

#27.00 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
(cont'd from 1-28-21 per order approving stip. to cont. mtn to dismiss and status conference entered 1-25-21)

Docket 1

*** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION RE: DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE AND VACATING STATUS CONFERENCE AND MOTION TO DISMISS HEARINGS SET FOR FEBRUARY 25, 2021 ENTERED 2-04-21

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

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8:13-16402 Gentile Family Industries

Chapter 11

Adv#: 8:20-01126 GENTILE FAMILY INDUSTRIES v. Gentile, Sr. et al

#28.00 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
(cont'd from 1-28-21 per order approving stip. to cont. mtn to dsm & status conference entered 1-25-21)

Docket 9

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION RE: DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE AND VACATING STATUS CONFERENCE AND MOTION TO DISMISS HEARNGS SET FOR FEBRUARY 25, 2021 ENTERED 2-04-21**

Tentative Ruling:

- NONE LISTED -

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

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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/1608440948>

ZoomGov meeting number: 160 844 0948

Password: 778119

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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8:19-12052 Deborah Jean Hughes

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**CAB WEST, LLC
Vs
DEBTOR**

Docket 170

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY FILED 2-16-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer
Michael Jones

Movant(s):

Cab West, LLC

Represented By
Sheryl K Ith

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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Courtroom 5B Calendar**

Tuesday, March 2, 2021

Hearing Room 5B

10:30 AM

8:21-10247 Wilfredo Martinez

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**BANK OF THE WEST
Vs
DEBTOR**

Docket 7

Tentative Ruling:

Tentative for 3/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Wilfredo Martinez

Pro Se

Movant(s):

BANK OF THE WEST

Represented By
Mary Ellmann Tang

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Tuesday, March 2, 2021

Hearing Room 5B

10:30 AM

8:16-13829 Diana Solis

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-05-21)

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 72

***** VACATED *** REASON: CONTINUED TO 4-13-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 2
-26-21**

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, March 2, 2021

Hearing Room 5B

10:30 AM

8:17-13050 David Jose Martinez

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**SELECT PORTFOLIO SERVICING, INC.
Vs
DEBTOR**

Docket 45

Tentative Ruling:

Tentative for 3/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

David Jose Martinez

Represented By
Ruben Fuentes

Movant(s):

Select Portfolio Servicing Inc., 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, March 2, 2021

Hearing Room 5B

10:30 AM

8:18-13799 Margoth Angelica Esquivel

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR**

Docket 46

Tentative Ruling:

Tentative for 3/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Margoth Angelica Esquivel

Represented By
LeRoy Roberson

Movant(s):

Wilmington Savings Fund Society,

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 2, 2021

Hearing Room 5B

10:30 AM

8:20-11067 Thomas Casey Beales

Chapter 13

#6.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTOR**

Docket 45

Tentative Ruling:

Tentative for 3/2/21:
Grant absent current post petition or APO.

Appearance: required.

Party Information

Debtor(s):

Thomas Casey Beales

Represented By
Anthony B Vigil

Movant(s):

TOYOTA MOTOR CREDIT

Represented By
Austin P Nagel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, March 2, 2021

Hearing Room 5B

10:30 AM

8:21-10012 Cathy Arlene Bailey

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

**NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR**

Docket 11

Tentative Ruling:

Tentative for 3/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Cathy Arlene Bailey

Represented By
Brian J Soo-Hoo

Movant(s):

Deutsche Bank National Trust

Represented By
Nancy L Lee

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Tuesday, March 2, 2021

Hearing Room 5B

11:00 AM

8:20-11350 Jae Kook Jun and Jee Hee Jun

Chapter 7

**#8.00 Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property)
(cont'd from 1-26-21)**

Docket 12

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION TO AVOID LIEN UNDER 11 USC SECTION 522(f) (Real
Property) - SETTLED BY STIPULATION ENTERED 2-19-21**

Tentative Ruling:

Tentative for 1/26/21:
Nothing new has been filed. Status?

See below for the court's previously unposted tentative ruling in anticipation of the hearing on December 8, 2020, which was vacated by stipulation:

Tentative for 12/8/20:

The court now has two competing appraisals, one at \$665k and the Bank's at \$725k figured as of the petition date. The difference creates the possibility that the lien will have attached to some significant value north of the \$100k exemption. Even the debtor's value would yield about \$10k of attachable value, considering the first lien of \$554k. No analysis is given as to which appraisal is closer or how the court is to resolve the dilemma. Absent that the court is inclined to schedule an evidentiary hearing at which time the appraisers will each testify subject to cross examination, and following the court will make a §506 determination. Of particular importance is an analysis of why the opposing appraisal is wrong. Continue approximately thirty days.

Party Information

Debtor(s):

Jae Kook Jun

Represented By
Andrew S Cho

Joint Debtor(s):

Jee Hee Jun

Represented By

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

Tuesday, March 2, 2021

Hearing Room 5B

11:00 AM

CONT... Jae Kook Jun and Jee Hee Jun

Chapter 7

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, March 3, 2021

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/1605608839>

ZoomGov meeting number: 160 560 8839

Password: 742283

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, March 3, 2021

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**

Wednesday, March 3, 2021

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, March 3, 2021

Hearing Room 5B

10:00 AM

8:20-10295 Katangian Vail Avenue Property Investments, LLC a

Chapter 11

#1.00 U.S. Trustee's Motion to Dismiss or Convert Case Pursuant to 11 USC Section 1112(b)

Docket 83

Tentative Ruling:

Tentative for 3/3/21:
Off calendar per stipulation?

Party Information

Debtor(s):

Katangian Vail Avenue Property

Represented By
Michael R Totaro

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

Wednesday, March 3, 2021

Hearing Room 5B

10:00 AM

8:17-10517 Lisa Hackett

Chapter 11

**#2.00 CONT Scheduling And Case Management Conference
(cont'd from 12-09-20)**

[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 3/3/21:

It sounds from the December status report like the plan is being paid as agreed but since no updated report was filed, the court is uncertain. Will debtor seek to administratively close or obtain a final decree? Timetable?

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

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

Wednesday, March 3, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

**#3.00 Original Disclosure Statement Describing Original 11 Plan
(cont'd from 1-13-21)**

Docket 115

Tentative Ruling:

Tentative for 3/3/21:
Approve. Set confirmation hearing and deadlines.

Tentative for 1/13/21:
The Disclosure Statement cannot be approved as written for the simple reason that it fails to meaningfully discuss the treatment of the \$1,335,000 of Claim #24, the Stelter claim. While the claim may be disputed it must be regarded as allowed until there is a formal determination otherwise. In practical terms, feasibility and other confirmation issues cannot be realistically evaluated without a discussion of how the claim will be met, or even if there will be an adversary proceeding, how would the reorganized debtor deal with a fully allowed claim if that should result.

Deny.

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, March 3, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

**#3.10 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 2-24-21)**

Docket 1

Tentative Ruling:

Tentative for 3/3/21:
Continue to coincide with confirmation hearing.

Tentative for 2/24/21:
Continue to coincide with hearing on disclosure on March 3, 2021 @10:00
a.m. Appearance not required.

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, March 3, 2021

Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#4.00 Plan Confirmation Hearing Re:Plan Of Reorganization
(cont'd from 12-02-20 per order apprvg. second stip. to cont. the hrg on
confirmation of debtor's ch 11 plan entered 11-17-20)

Docket 342

***** VACATED *** REASON: CONTINUED TO 5-26-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
HEARING ON CONFIRMATION OF DEBTOR'S CHAPTER 11 PLAN
ENTERED 2-23-21**

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
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Judge Theodor Albert, Presiding
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Wednesday, March 3, 2021

Hearing Room 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
G Bryan Brannan

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

Wednesday, March 3, 2021

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

#5.00 STATUS CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))
(con't from 12-02-20)

Docket 1

Tentative Ruling:

Tentative for 3/3/21:
Status conference continued to:

Deadline for completing discovery: April 15, 2021
Last date for filing pre-trial motions: April 30, 2021
Pre-trial conference on: June 2, 2021 @ 10:00AM
Joint pre-trial order due per local rules.

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?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 3, 2021

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

Wednesday, March 3, 2021

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
G Bryan Brannan

Defendant(s):

DEPARTMENT OF THE

Represented By
Jolene Tanner

UNITED STATES OF AMERICA

Represented By
Jolene Tanner

Plaintiff(s):

Ron S Arad

Represented By
G Bryan Brannan

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

Thursday, March 4, 2021

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/1618156658>

ZoomGov meeting number: 161 815 6658

Password: 671634

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, March 4, 2021

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.

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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

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

Thursday, March 4, 2021

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**

Thursday, March 4, 2021

Hearing Room 5B

10:00 AM

8:20-10313 Daniel James Maldonado

Chapter 7

Adv#: 8:20-01172 Marshack v. Inserra

#1.00 STATUS CONFERENCE RE: Complaint For I.Turnover Of Property Pursuant To 11 USC 542; II. Fraudulent Conveyence Under 11 USC Sec 544 And California Civil Code Sec. 3439 et seq.; III. Recovery Of A Preference Under 11 USC Sec. 550; And IV. Preservation Of The Transfer For The Benefit Of The Estate Pursuant To 11 USC Sec. 551

Docket 1

Tentative Ruling:

Tentative for 3/4/21:

Deadline for completing discovery: November 21, 2021

Last date for filing pre-trial motions: December 1, 2021

Pre-trial conference on: December 9, 2021 @ 10:00 a.m.

Joint pre-trial order due per local rules.

Appearance: required

Party Information

Debtor(s):

Daniel James Maldonado

Represented By
Kevin J Kunde

Defendant(s):

Lisa Inserra

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Anerio V Altman

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman
Anerio V Altman

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

Thursday, March 4, 2021

Hearing Room

5B

10:00 AM

8:20-12166 Stephen F. Sturm

Chapter 13

Adv#: 8:20-01173 Sturm v. Dan Cook Inc

#2.00 STATUS CONFERENCE RE: Complaint To Determine Nature, Extent And Priority Of Lien; Declaratory Relief; Disallowance Of Claim

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-24-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION RE MEDIATION OF
DISPUTES, TOLLING OF RESPONSE DATES AND CONTINUATION OF
STATUS CONFERENCE ENTERED 1-26-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephen F. Sturm

Represented By
Joseph A Weber

Defendant(s):

Dan Cook Inc

Pro Se

Plaintiff(s):

Stephen F. Sturm

Represented By
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Thursday, March 4, 2021

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.

#3.00 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 12-03-20 per order approving stipulation entered 11-16-20)

Docket 1

Tentative Ruling:

Tentative for 3/4/21:

Status re effective date of settlement approved by order entered December 17, 2020?

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

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

Thursday, March 4, 2021

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

Defendant(s):

Anna's Linens, Inc.

Pro Se

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, March 4, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#4.00 PRE-TRIAL 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) (cont'd from 2-04-21)

Docket 1

Tentative Ruling:

Tentative for 3/4/21:
Settled? Status?

Tentative for 2/4/21:
Continue to March 4, 2021 @ 10:00AM Plaintiff to give notice.
Appearance: optional

Tentative for 1/7/21:
Continue to hear settlement referred to in December 23, 2020 Notice?

Appearance: required

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.

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**

Thursday, March 4, 2021

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

Defendant(s):

Igor Shabanets

Pro Se

Plaintiff(s):

Porsche Leasing Ltd.

Represented By
Stacey A Miller

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, March 9, 2021

Hearing Room 5B

10:30 AM

8: -

Chapter

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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
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Chapter

Tentative Ruling:

- NONE LISTED -

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10:30 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#1.00 Motion For Relief From The Automatic Stay PERSONAL PROPERTY

**FINANCIAL SERVICES VEHICLE TRUST
Vs.
DEBTOR**

Docket 96

Tentative Ruling:

Tentative for 3/9/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

United States Bankruptcy Court
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Tuesday, March 9, 2021

Hearing Room 5B

10:30 AM

8:20-13190 Michael Robert Yates

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**MILESTONE FINANCIAL, LLC dba MERS FUND I
Vs
DEBTOR**

Docket 24

***** VACATED *** REASON: CONTINUED TO 3-16-21 AT 10:00 A.M.
PER NOTICE OF CONTINUANCE HEARING ON MOTION FOR
RELIEF FROM THE AUTOMATIC STAY BY MILESTONE FINANCIAL,
LLC FILED 2-17-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Robert Yates

Represented By
Raj T Wadhvani

Movant(s):

Milestone Financial LLC dba Mers

Represented By
Harris L Cohen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:20-13512 Akhlaq Ur Rehman

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S.. BANK TRUST NATIONAL ASSOCIATION
Vs
DEBTOR**

Docket 9

Tentative Ruling:

Tentative for 3/9/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Akhlaq Ur Rehman

Represented By
Julie J Villalobos

Movant(s):

U.S. Bank Trust National

Represented By
Erica T Loftis Pacheco

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:20-12829 A-Rising Builders, Inc.

Chapter 7

**#4.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 2-02-21)**

**SHARA ROBERSON
Vs
DEBTOR**

Docket 25

Tentative Ruling:

Tentative for 3/9/21:
Proof of service?

Tentative for 2/2/21:
Was debtor served per LBRs? Continue for that purpose.
Appearance: optional

Party Information

Debtor(s):

A-Rising Builders, Inc.

Represented By
Joseph M Tosti

Movant(s):

Shara Roberson

Represented By
Paul J Carter

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:21-10242 Thomas Richard Reynolds

Chapter 13

#4.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 24775 Perseus Court, Mission Viejo, CA 92691 .
(OST Signed 3-01-21)

Docket 36

Tentative Ruling:

Tentative for 3/9/21:
Per OST, opposition due at 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
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Tuesday, March 9, 2021

Hearing Room 5B

11:00 AM

8:06-12291 Jacob P Schaffer

Chapter 7

#5.00 Trustee's Final Report And Application For Compensation:

THOMAS H. CASEY, CHAPTER 7 TRUSTEE

FEES: \$1,253.43

EXPENSES: \$0.00

Docket 42

Tentative Ruling:

Tentative for 3/9/21:
Allowed as prayed. Appearance: optional

Party Information

Debtor(s):

Jacob P Schaffer

Represented By
Bruce D White

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:11-16565 Michael D Cooper and Kristine D Cooper

Chapter 7

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

OFFICES OF THOMAS H. CASEY, INC., ATTORNEY FOR TRUSTEE

SWICKER & ASSOCIATES, ACCOUNTANT FOR TRUSTEE

RICHARD E. QUINTILONE II, OTHER

RICHARD E. QUINTILONE II, OTHER

Docket 151

Tentative Ruling:

Tentative for 3/9/21:
Approved. Appearance: optional

Party Information

Debtor(s):

Michael D Cooper

Represented By
Roger J Plasse
Kelly S Johnson - SUSPENDED BK -

Joint Debtor(s):

Kristine D Cooper

Represented By
Roger J Plasse

Trustee(s):

James J Joseph (TR)

Represented By
Thomas H Casey
James J Joseph (TR)

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Tuesday, March 9, 2021

Hearing Room 5B

11:00 AM

8:19-13596 Kareem Hussein Ibrahim and Ashlie Brianne Fleig Ibrahim

Chapter 7

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

THOMAS H. CASEY, CHAPTER 7 TRUSTEE

RINGSTAD & SANDERS, ATTORNEY FOR TRUSTEE

HAHN FIFE & COMPANY, ACCOUNTANT FOR TRUSTEE

Docket 0

Tentative Ruling:

Tentative for 3/9/21:
Allowed as prayed. Appearance: optional

Party Information

Debtor(s):

Kareem Hussein Ibrahim

Represented By
Gregory E Nassar

Joint Debtor(s):

Ashlie Brianne Fleig Ibrahim

Represented By
Gregory E Nassar

Trustee(s):

Thomas H Casey (TR)

Represented By
Karen S. Naylor

**United States Bankruptcy Court
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Tuesday, March 9, 2021

Hearing Room 5B

11:00 AM

8:19-13769 Larry Randy Bennett and Kellee Rae Bennett

Chapter 7

#8.00 Debtor's Motion To Compel Trustee To Abandonment Of Mr. Bennett's Contingent One-Quarter Remainderman interest In The Life Estate Of Rosio Angel (A.K.A. Maria Angel), The Girlfriend Of Larry Bennett's Deceased Father

Docket 29

Tentative Ruling:

Tentative for 3/9/21:

Bankruptcy Code §554(b) provides: "On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). Thus, "[i]n order to approve a motion to abandon property, the bankruptcy court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). "An order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987).

A. Is the property of inconsequential value and inconsequential benefit to the Estate?

This question seems an appropriate starting point since it is difficult to determine whether the property is a burden on the estate without first determining its worth. However, determining the value and benefit of the property in question is also a difficult task. The necessary questions seem to be: (1) Is the Remainder Interest vested or contingent? (2) Can the Remainder Interest be passed to and sold by the Trustee? (3) What is the value of the Remainder Interest? (4) What is the benefit to the Estate?

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Larry Randy Bennett and Kellee Rae Bennett

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(1) The Remainder Interest is a vested remainder.

"The true criterion establishing a vested remainder is the existence, in an ascertained person, of a present right of future enjoyment of the remainder, the right to take effect in possession immediately on termination of the precedent estate and irrespective of any collateral event, provided the remainder does not terminate before the precedent estate." 64 Cal. Jur. 3d Wills § 567.

Here, the only contingency set forth in the Trust is in the statement, "[i]f any of said beneficiaries should not survive Robert Bruce Bennett, said property shall be given to the surviving beneficiaries (as identified in this subsection i.), in equal share." Thus, as the Trustee argues in the Opposition, the Remainder Interest vested as soon as Debtor (and seemingly all three other listed beneficiaries) survived his father, giving Debtor a vested remainder interest in one-fourth of the Property and the specified personal property therein. The Life Estate granted to Ms. Angel does not create a contingency, it is merely a precedent estate that is certain to terminate upon Ms. Angel's death. No language in the Trust suggests that Mr. Bennett must survive Ms. Angel for his interest to vest, as the Debtor attempts to argue. Therefore, the Remainder Interest is a vested remainder in one-fourth of the Property and the specified personal property therein.

(2) The Remainder Interest can be passed to and sold by the Trustee.

"A vested remainder is not dependent upon any uncertain events or contingency and may be devised or sold or transferred." 28 Am. Jur. 2d Estates § 203. Furthermore, while bankruptcies involving vested remainders are not well documented in this jurisdiction, "[t]here is no doubt but that a vested remainder passes to the trustee in bankruptcy as assets of the remainderman." A.L.R. 784 (Originally published in 1927). As the Trustee points out in the Opposition, it is well-established that "encompassed within

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Larry Randy Bennett and Kellee Rae Bennett

Chapter 7

estate property will be a debtor's vested remainder interest in a life estate, thereby making the Debtor's remainderman interest in her mother's property subject to administration by the Trustee." *Kovacs v. Sargent (In re Sargent)*, 337 B.R. 661, 665 (Bankr. N.D. Ohio 2006) (citing *Rose v. Carlson (In re Rose)*, 113 B.R. 535, 537 (W.D. Mo. 1990) (debtor's vested remainder fee interest was property of the bankruptcy estate.)). Although the court in *Sargent* held that the Trustee was not permitted to sell the real property, the court stated that "this decision in no way prohibits the Trustee from seeking to sell the Debtor's remainderman interest in the property free and clear of the Debtor's brother who, also having a remainderman interest in the property, would simply be a co-owner . . ." *Id.* at 667.

Thus, since Debtor has a vested remainder interest in the Property and the specified personal property therein, it follows that the Remainder Interest passes to the Trustee and that the Trustee may seek to sell the Remainder Interest.

(3) The Remainder Interest likely has significant value, but that amount is unclear.

The value of the Remainder Interest is a question that requires more information; most notably, will someone purchase it and for how much? However, it seems therefore the Trustee was asking Debtor for the age and health status of the Life Tenant, and for the contact information of the three other remaindermen. The Trustee argues that the Remainder Interest is marketable, but that a sale has not occurred yet because she is trying to get said information in order to estimate the value and determine if any of the other beneficiaries would be interested in purchasing it. However, Debtor argues that the lack of sale of the Remainder Interest over the last fifteen months is evidence that the interest has no value.

As Exhibit 1 to the Opposition, the Trustee provides a preliminary title report on the Property evidencing no liens against the Property. Moreover,

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Larry Randy Bennett and Kellee Rae Bennett

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Trustee's real estate agent has advised her that the Property is worth between \$545,000 and \$560,000. Therefore, if the Life Estate were to terminate today, the Remainder Interest in the real property would likely be worth at least \$100,000, and probably more depending on required expenses, costs, and fees. In addition, the personal property portion of the Remainder Interest consists of a one-quarter share in "all household furniture, furnishings, appliances, and personal possessions located therein, non-inclusive of that personal property otherwise specifically gifted to named beneficiaries." See Motion – Exhibit C. It is impossible to know what personal property will be left when the Life Estate terminates, however an estimated value of the Remainder Interest may be deducible from the property that currently exists. Furthermore, in Debtor's Amended Schedule C, Debtor listed a new exemption of \$20,000 pertaining to the Remainder Interest in the personal property, which is somewhat arbitrary but also telling that there may be items of significant value.

On the other hand, Debtor argues that the Remainder Interest has no value or benefit, and is thus burdensome to the Estate, because: it is a contingent remainder; the Life Tenant is predicted to live another 22.81 years; one of three sibling beneficiaries objects to any sale of the Property and does not want to purchase Mr. Bennett's interest; and the Trustee has been unable to find a willing buyer thus far.

But a difficult asset is not necessarily a worthless one. Debtor's first argument has already been invalidated since the Remainder Interest has been established as a vested remainder. The second reason is a prediction based on an actuarial table and, while it may be a valid statistical prediction, it does not take into account the health status of this specific Life Tenant, nor the willingness of a purchaser to pay a somewhat reduced price based on the estimated duration of the Life Estate. The third reason is irrelevant because it only pertains to one of the three remaindermen, and an objection to the sale of the Property does not prevent the Trustee from selling the Remainder

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CONT... Larry Randy Bennett and Kellee Rae Bennett
Interest (as discussed above in *Sargent*).

Chapter 7

Lastly, the fourth reason is somewhat circular, because Debtor has seemingly been uncooperative in providing the Trustee with basic information that would help the Trustee to value, market, and sell the Remainder Interest. However, it is uncertain as to whether there are other means that the Trustee could have employed to get such information, and/or whether Trustee should have moved forward with a third-party sale already. Debtor argues that "[t]he bankruptcy court cannot be expected to deny the Debtors' request to compel abandonment on the basis of a speculative scenario which may or may not occur in the future." *In re Nelson*, 251 B.R. 857, 861 (B.A.P. 8th Cir. 2000). However, *Nelson* was a case in which the Trustee admitted that the debtors had no equity in the real property at issue and that a sale would not generate any benefit for the bankruptcy estate. *Id.* at 860. The only value was in rental income stream, which would be "swiftly captured by the secured creditors." *Id.* In contrast, in the instant case the Remainder Interest seems to have significant equity without any encumbrances, even though it is a future interest with a value yet to be determined.

As stated in *In re K.C. Mach & Tool Co.*, "[a]n order compelling abandonment is the exception, not the rule." Debtor has the burden of proof to show that the property is either a burden on the estate or is of inconsequential value and inconsequential benefit. *Id.* at 246; See *In re Dillon*, 219 B.R. 781, 785 (Bankr. M.D. Tenn. 1998); *Smoker v. Hill & Assocs., Inc.*, 204 B.R. 966, 975 (N.D.Ind.1997); *In re Siegel*, 204 B.R. 6, 8 (Bankr.W.D.N.Y.1996). Debtor has not carried that burden here. While the sale of the Remainder Interest is somewhat speculative, the Trustee has provided specific information to demonstrate that the Remainder Interest has value, which can likely be estimated for a potential sale. Furthermore, Debtor reportedly has just recently provided much of the information that the Trustee was requesting, and thus Trustee should not be prohibited from an attempted sale.

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CONT... **Larry Randy Bennett and Kellee Rae Bennett** Chapter 7
(4) Whether the Remainder Interest has a consequential benefit to the Estate is unclear.

Again, because the value of the Remainder Interest is yet to be determined, the benefit to the Estate is subsequently difficult to ascertain. However, as discussed above, the Remainder Interest appears to have significant unencumbered value. The main question is then whether the estimated value would exceed any applicable exemptions claimed by Debtor, as well as administrative fees incurred, so as to provide a net benefit to the Estate and the creditors.

Debtor filed an Amended Schedule C, which included a new exemption of \$27,129.75 pertaining to the Remainder Interest in the real property, and a new exemption of \$20,000 pertaining to the Remainder Interest in the personal property therein. See Motion - Exhibit G. Under CCP § 703.140(b) (5), Debtor may elect to exempt "the debtor's aggregate interest, not to exceed one thousand five hundred fifty dollars (\$1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property." Here, Debtor validly subtracted the previously used \$3,695.25, so this use of the Wildcard Exemption appears valid. As for the \$20,000 exemption pertaining to personal property, under 703.140(b)(3), the Debtor may elect to exempt "the debtor's interest, not to exceed seven hundred twenty-five dollars (\$725) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books . . . that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor." "California's exemption statutes do not expressly define household furnishings; however, such property is exempt if 'ordinarily and reasonably necessary to, and personally used or procured for use' by the debtor." *In re Thornton*, 91 B.R. 913, 914 (Bankr. C.D. Cal. 1988). Courts in various jurisdictions have interpreted the meaning of "household goods" differently, but nowhere has this exemption been interpreted to include a future interest in unspecified property that is not currently in Debtor's possession. Thus, Debtor's \$20,000 exemption is likely invalid. However, the

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Larry Randy Bennett and Kellee Rae Bennett

Chapter 7

Amended Schedule C was filed on February 21, 2020, and it does not seem that either exemption was challenged. Therefore, whether both exemptions, or only the Wildcard Exemption, is valid is an important remaining question in determining the benefit of the Remainder Interest.

In addition, the firm employed by the Trustee currently charges hourly rates ranging from \$250–\$750 and, during the period of 03/02/2020 – 03/27/2020, the firm incurred approximately \$1,020.00 in fees. See DN# 22. Thus, the administrative fees incurred are presumably much higher seeing as it has been nearly a year since then. Therefore, in order to determine whether the Remainder Interest has a consequential benefit to the Estate, the Court must ascertain: (1) the estimated value/purchase price of the Remainder Interest; (2) which exemption(s) will validly apply to the Remainder Interest; and (3) an estimate of the total administrative fees that will be incurred in conjunction with this matter. However, again, Debtor has not put forth compelling evidence (or any evidence) to show that the Remainder Interest is of inconsequential benefit to the Estate, as is his burden.

Although still very unclear, it is likely that the value of the Remainder Interest is not inconsequential. But Debtor has not satisfied the burden of showing that the Remainder Interest is of inconsequential value and inconsequential benefit to the Estate.

5. Is the property burdensome to the Estate?

This question is very similar to the one posed directly above, in that the same information must be ascertained by the Court: (1) the estimated value/purchase price of the Remainder Interest; (2) which exemption(s) will validly apply to the Remainder Interest; and (3) an estimate of the total administrative fees that will be incurred in conjunction with this matter. Fortunately, no ongoing financial obligation incident to the property is reported, so arguably the Trustee could hold for an extended period before

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CONT... Larry Randy Bennett and Kellee Rae Bennett Chapter 7

this issue would become a factor, if ever. Again, Debtor's burden is not carried.

6. Conclusion

While it is clear that Debtor's Remainder Interest is a vested remainder that can be passed to and sold by the Trustee, more information is necessary to better surmise whether the Remainder Interest is either burdensome to the Estate, or is of inconsequential value/benefit to the Estate. Debtor has not put forth compelling evidence for either conclusion.

Deny

Party Information

Debtor(s):

Larry Randy Bennett

Represented By
Nicholas W Gebelt

Joint Debtor(s):

Kellee Rae Bennett

Represented By
Nicholas W Gebelt

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Reem J Bello

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11:00 AM

8:19-14987 Jeffrey T. Anderson and Kelly Magan Donegan Anderson

Chapter 7

#9.00 Chapter 7 Trustee's Notice of Motion And Motion For Order Approving
Compromise With The Debtors Pursuant To Federal Rule Of Bankruptcy
Procedure 9019

Docket 31

Tentative Ruling:

Tentative for 3/9/21:
Approve. Appearance optional

Party Information

Debtor(s):

Jeffrey T. Anderson

Represented By
Warren G Enright

Joint Debtor(s):

Kelly Magan Donegan Anderson

Represented By
Warren G Enright

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Roye Zur

**United States Bankruptcy Court
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Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

**#10.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Motion for an Order Finding Kenneth Gharib and Freedom Investment Corp. in Contempt of Court, Imposing Sanctions, and Continued Incarceration of Kenneth Gharib
(cont'd from 2-04-21 per order approving stip. to cont. s/c re: contempt and/or defense of impossibility re: Kenneth Gharib entered 2-03-21)**

Docket 457

Tentative Ruling:

Tentative for 3/9/21:
Status?

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:

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CONT... Kenny G Enterprises, LLC
See #5.

Chapter 7

Tentative for 9/25/18:
No tentative.

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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10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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ZoomGov meeting number: 161 445 0755

Password: 809361

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Judge Theodor C. Albert's Cases" on the Court's website at:
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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 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.
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Chapter

Tentative Ruling:

- NONE LISTED -

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10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

#1.00 U.S. Trustee's Motion To Dismiss Case Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. §1112(b);

Docket 102

Tentative Ruling:

Tentative for 3/10/21:
Appoint an 11 Trustee.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Vicki L Schenum

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

Wednesday, March 10, 2021

Hearing Room 5B

10:00 AM

8:18-12449 Gregory Anton Wahl

Chapter 11

**#2.00 Post Confirmation Status Conference
(con't from 1-13-2021 per order to continue entered 12-23-20)**

Docket 1

Tentative Ruling:

Tentative for 3/10/21:
Continue for further status conference is approximately 6 months.
Appearance is required.

Tentative for 7/22/20:
Set continued post confirmation status hearing in about 120 days.
Appearance is optional.

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:

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

Wednesday, March 10, 2021

Hearing Room 5B

10:00 AM

**CONT... Gregory Anton Wahl
Status?**

Chapter 11

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.

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 10, 2021

Hearing Room 5B

10:00 AM

CONT... Gregory Anton Wahl

Chapter 11

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 10, 2021

Hearing Room 5B

10:00 AM

8:19-10552 Bruce Reyner

Chapter 11

**#3.00 CONT Post Confirmation Status Conference
(cont'd from 11-04-20)**

[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 3/10/21:

Continue for further status in about six months but anticipating a final decree or administrative closing motion in meantime which will take further status conference off calendar.

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
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, March 10, 2021

Hearing Room 5B

10:00 AM

8:21-10256 BioXXel, LLC

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
LLC**

Docket 1

Tentative Ruling:

Tentative for 3/10/21:
Plan and disclosure deadline July 1, 2021. Claims bar sixty days from
dispatch of notice.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 10, 2021

Hearing Room 5B

10:00 AM

8:21-10256 BioXXel, LLC

Chapter 11

#5.00 Emergency Motion For Order Authorizing Use of Cash Collateral And
Determining That Its Secured Creditor Is Adequately Protected
(OST Signed 2-08-21)
(cont'd from 2-10-21)

Docket 10

Tentative Ruling:

Tentative for 3/10/21:

Continue on same terms pending continued status conference to be set in
early July.

Tentative for 2/10/21:

Grant absent opposition at the hearing subject to a point of clarification .
Does debtor through its motion seek to alter the normal attachment of
security interest to accruing post-petition rents under the standard provisions
of most trust deeds? The motion could be read as so arguing, i.e. that value
of the fee interest is alone sufficient. Such a reading is not favored and would
require a great deal more than is shown here, certainly not on shortened time.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood

Movant(s):

BioXXel, LLC

Represented By
David Wood

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

Wednesday, March 10, 2021

Hearing Room

5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#6.00 First Interim Fee Application For Approval of Compensation For The Period:
June 4, 2020 through February 11, 2021:

**JEFFREY S. SHINBROT, APLC, DEBTOR'S GENERAL CHAPTER 11
COUNSEL**

FEES: \$107,125.00

EXPENSES: \$1532.31

Docket 136

Tentative Ruling:

Tentative for 3/10/21:
Allowed as prayed.

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, March 10, 2021

Hearing Room 5B

10:00 AM

8:19-11153 Harry L Morris, Jr.

Chapter 11

#7.00 Debtor-In-Possession's Motion For Order Approving: 1. Sale of Real Property of the Estate Free And Clear Of Liens Pursuant To Bankruptcy Code Section 363(b)(1) And 363(f), Subject To Overbids; 2. Bidding Procedures And Form Of Notice Thereof; 3. Payment Of Real Estate Commission And Other Costs; And 4. Waiver Of The 14-Day Stay Of FRBP Section 6004(h)

Docket 171

Tentative Ruling:

Tentative for 3/10/21:

The court will require a declaration about arms-length at such time as the buyer becomes known and before escrow closes. On the second point raised by Kelly Morris, this would seem to depend on how title is held. If it is community property then it is all property of the estate and should be dealt with as indicated in the motion. But Ms. Morris asserts that it is a joint tenancy, but why that should be is not explained. Has title transmuted and , if so, when/how? Grant subject to explanation.

Party Information

Debtor(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

Movant(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 10, 2021

Hearing Room 5B

10:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#8.00 Motion for Order: (1) Authorizing Sale of Real Property (10282 Ambervale Lane, North Tustin, CA 92705) Free and Clear of Liens and Interests; (2) Approving Overbid Procedures in Connection with the Proposed Sale; (3) Confirming Sale to the Third Party Purchaser; (4) Determining That the Buyer is a Good Faith Purchaser; (5) Authorizing the Withholding and Remittance of Estimated State Income Taxes Arising from the Sale; and (6) Waiving the Fourteen Day Stay Prescribed by Federal Rule of Bankruptcy Procedure 6004(h)

Docket 134

Tentative Ruling:

Tentative for 3/10/21:

This is Debtor's motion for sale of real property of the estate free of liens under §363(f) subject to overbid. The motion received only one limited opposition from interested party, The United States of America through its agency, the Internal Revenue Service ("IRS"). IRS does not oppose the sale, so we have grounds for an order free of liens under §363(f)(2). The only reason there is any friction is that Debtor apparently asks that only some of the proceeds be held pending resolution of the disputed IRS claim, which claim is potentially a sum larger than anticipated proceeds, but apparently only a portion of which is a lien claim, and Debtor proposes to take a homestead exemption from proceeds.

Debtor proposes that the Property will be sold free and clear of the disputed IRS Lien except that the initial \$10,000 penalty for failure file Form 8938, plus related interest, and the interest and penalties owed for the 2015 tax year will be paid from the sales proceeds. Payment of these amounts to the IRS will be without prejudice to the ability of the Debtor to contest the amounts paid by appropriate administrative or judicial means. The portion of the proceeds required to pay the "continuation penalty" (and related interest) will be held in a segregated account pending the resolution (whether by agreement or by litigation) of the dispute regarding the validity of the

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 10, 2021

Hearing Room

5B

10:00 AM

CONT...

Rafik Youssef Kamell

Chapter 11

continuation penalty. The Property is also to be sold free and clear of the Labor Lien, which is disputed because, Debtor argues, it was recorded post-petition in violation of the automatic stay. In any case, even if the Labor Lien is found to be valid, the lien amount is relatively small (reportedly less than \$3,000) and could be paid from the proceeds of the sale.

The court notes that Debtor claims a homestead exemption in the amount of \$75,000 pursuant to California Code of Civil Procedure §704.730, and that the IRS has, to date, filed five iterations of its claim over the past year. In Claim #3-5, filed on November 24, 2020, the IRS puts forth a claim totaling \$2,556,951.19, which consists of a secured claim of \$71,381.77, including unpaid penalty pursuant to 26 U.S.C. §6038D "Information With Respect to Foreign Financial Assets" for taxable year 2013, and unpaid income taxes and related penalties and interest for 2015 tax year; a priority claim totaling \$1,933,709.37 for unpaid estimated income taxes for the 2015 through 2019 tax periods; and an unsecured general claim of \$551,860.05 for unpaid estimated taxes for the 2013 and 2014 tax years, and related penalties and penalties related to the priority taxes.

To be clear, the IRS's limited opposition states unequivocally that it does not oppose the sale, but only insists that if the sale goes forward, that the secured portion of its claim (\$71,381.77) be paid from the proceeds of the sale without delay. To date, the Debtor has not objected to the IRS's claim and/or amended claims, but given the numerous iterations of the IRS claim, that is perhaps not surprising.

Instead, Debtor categorizes the IRS claim as being subject to a *bona fide* dispute pursuant to §363(f)(4) because Debtor believes the IRS failed to follow certain statutory notice guidelines in issuing continuation penalties, which according to Debtor, could be fatal to at least part of the IRS's claim. The IRS sharply disagrees with Debtor's analysis, asserting its compliance with the statutory notice guidelines. In any case, although the court notes that the IRS has presented rather compelling evidence of the righteousness of its

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, March 10, 2021

Hearing Room 5B

10:00 AM

CONT...

Rafik Youssef Kamell

Chapter 11

position, the court is neither required nor disposed to deciding whether the IRS lien (above the agreed amount) is valid at this juncture. Debtor and the IRS both agree that the proper procedure is likely for Debtor to file a claim objection, but they disagree on terms. The IRS proposes that Debtor be required to file a claim objection within 30 days following the hearing on this motion. Debtor argues that such a deadline is arbitrary, and instead asserts that the IRS has not provided adequate documentation to support its claim despite Debtor's requests, which has led Debtor to file a Freedom of Information Act ("FOIA") request. Debtor suggests that he be allowed to file an objection to the IRS's secured claim 45-days from when he receives a response to his FOIA request. No timeline is given as to when a response to the FOIA request might be forthcoming. The other side of the equation is the expected revenue to be generated by the proposed sale, which Debtor asserts will be approximately \$642,000 after payment of costs and all other liens. Thus, the expected net proceeds should be more than sufficient to cover the IRS's lien even after hypothetically deducting Debtor's claimed homestead exemption. To that end, Debtor is agreeable to segregating funds sufficient to cover the IRS's lien in the event it is found to be valid. The court agrees that a claim objection is the proper way to proceed once Debtor has received the information he purportedly requires.

But Debtor glosses over the question of whether IRS is accruing more interest on its lien claim as it is apparently entitled to do under §506(b). Aside from the limited opposition from the IRS, as noted, the motion has not received opposition from any other interested party. The overbidding procedures seem to be standard. There is no indication or evidence of bad faith or collusion between Debtor and Buyer. The sale also appears to have a valid business purpose and is in the best interests of creditors as it will provide significant funds to pay allowed claims against the estate.

But the question of homestead also arises. "Even though the homestead might be exempt under state law from the claims of private creditors, [n]o provision of a state law may exempt property or rights to

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, March 10, 2021

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10:00 AM

CONT...

Rafik Youssef Kamell

Chapter 11

property from levy for the collection of federal taxes owed." See *United States v. Estes*, 450 F.2d 62, 65 (5th Cir. 1971). Indeed, the Supremacy Clause permits the federal government to effectively "sweep aside state-created exemptions." *In re Bolden*, 327 B.R. 657, 663 (Bankr. C.D. Cal. 2005) (quoting *United States v. Rodgers*, 461 U.S. 677, 701 (1983)). Thus, "[a] state-created homestead exemption is ineffective against a federal tax lien." *Davenport v. United States*, 136 B.R. 125, 127 (W.D. Ky. 1991) (citing, *inter alia*, *United States v. Mitchell*, 403 U.S. 190 (1971); *United States v. Bess*, 357 U.S. 51 (1958)). Furthermore, the IRS asserts that homesteads do not create a separate interest that is not reachable by federal tax liens in California. *Shaw v. United States*, 331 F.2d 493, 497 (9th Cir. 1964). The Bankruptcy Code provides various exceptions under section 522(c) to the exemption. Among them, under 11 U.S.C. § 522(c)(2)(B), a debtor cannot exempt property from a tax lien, "notice of which is properly filed". See 11 U.S.C. § 522(c)(2)(B).

Under 26 U.S.C. § 6321, a lien arises in favor of the United States and against the property and rights to property, whether real or personal, of any taxpayer who is liable to pay a tax who neglects or refuses to do so. The reach of a federal tax lien includes property that may be exempt under a state homestead exemption. See *Estes*, 450 F.2d at 65 ("Even though the homestead might be exempt under state law from the claims of private creditors, 'no provision of a state law may exempt property or rights to property from levy for the collection of federal taxes owed'"); see also *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 719-20 (1985) ("The statutory language 'all property and rights to property,' appearing in § 6321 . . . is broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have. . . . Stronger language could hardly have been selected...").

The court is inclined to allow payment of all undisputed secured claims from proceeds of the sale along with the associated costs of sale. The court is also inclined to order funds sufficient to pay the disputed IRS and Labor Liens

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Wednesday, March 10, 2021

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10:00 AM

CONT... Rafik Youssef Kamell

Chapter 11

to be held in a segregated account pending adjudication. As to the homestead exemption, the court will hear argument as to whether exempt funds from the sale should be released to Debtor. The court will also hear argument on whether there is any reason to impose arbitrary timetables for claim objection.

Grant as described.

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**

Thursday, March 11, 2021

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/1604496915>

ZoomGov meeting number: 160 449 6915

Password: 831915

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, March 11, 2021

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
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Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
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Thursday, March 11, 2021

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 12-10-20 per order approving stip. to cont s/c entered 11-10-20)
(rescheduled from 11-12-2020 per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4/22/21 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE AND ESTABLISH CERTAIN DEADLINES ENTERED 2-
25-21**

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
Judge Theodor Albert, Presiding
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Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Brian R Nelson

James C Bastian Jr

Melissa Davis Lowe

Steven T Gubner

Jason B Komorsky

Christopher Minier

Jerrold L Bregman

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 11, 2021

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
(cont'd from 12-10-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-06-21 AT 10:00 A.M.
PER ANOTHER SUMMONS ISSUED ON 2-18-21**

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?

Party Information

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

Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

CONT...

Zia Shlaimoun

Sunjina Kaur Anand Ahuja

Chapter 7

United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

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
(cont'd from 1-07-21 per order granting mtn to cont. s/c entered 1-04-21)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION BETWEEN CHAPTER 7 TRUSTEE AND INTERSTATE OIL COMPANY TO DISMISS CLAIMS AGAINST INTERSTATE OIL COMPANY WITH PREJUDICE ENTERED 2-16-21**

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
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Thursday, March 11, 2021

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 1-28-21)**

Docket 1

Tentative Ruling:

Tentative for 3/11/21:
Status?

Tentative for 1/28/21:
All the deadlines have passed but no significant status report has been
received despite several continuances. Status?

Appearance: required

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

**United States Bankruptcy Court
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Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

Tentative for 3/28/19:
Deadline for completing discovery: September 30, 2019
Last Date for filing pre-trial motions: October 23, 2019
Pre-trial conference on October 10, 2019 at 10:00am
Joint Pre-trial order due per LBRs.
Refer to Mediation. Order appointing mediator to be lodged by Plaintiff within 10 days.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

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

Thursday, March 11, 2021

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.

**#5.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 12-03-20 per order approving stip to cont. s/c entered 11-23-20)
(cont'd from 2-04-21 per order approving joint stip for extension of deadlines in scheduling order entered 12-16-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-8-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 1-25-21.**

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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Thursday, March 11, 2021

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10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#6.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
**(set from obj. to & mtn to disallow proof of clm no. 65 hrg held on 8-11-20)
(cont'd from 2-04-21 per order approving joint stip. for extension of deadlines in scheduling order entered 12-16-20)**

Docket 258

***** VACATED *** REASON: CONTINUED TO 4-8-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 1-25-21**

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.

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.

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**

Thursday, March 11, 2021

Hearing Room 5B

10:00 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**

Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#7.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select Portfolio Servicing, Inc.
(set from s/c hrg held on 8-11-20)
(cont'd from 2-04-21 per order approving joint stip. for extension of deadlines in scheduling order entered 12-16-20)

Docket 260

***** VACATED *** REASON: CONTINUED TO 4-8-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 1-25-21.**

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

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**

Thursday, March 11, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 PRE-TRIAL 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
(set from s/c hrg. held on 8-11-20)
(cont'd from 2-04-21 per order approving joint stip. for extension of deadlines in scheduling order entered 12-16-20)

Docket 476

***** VACATED *** REASON: CONTINUED TO 4-8-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 1-25-21.**

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

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**

Thursday, March 11, 2021

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC et al

#9.00 STATUS CONFERENCE RE: First Amended Complaint For: (1) Declaratory Relief; (2) Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550; (3) Unjust Enrichment / Disgorgement; (4) Avoidance and Preservation of Claims Pursuant to 11 U.S.C. §§ 502, 506, 544, and 510(c); (5) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548 and 550; (6) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544, 548 and 550; (7) Usury; (8) Injunction; (9) Determination of Liens Pursuant to 11 U.S.C. §§ 502, 506 and 551; (10) Unconscionability; (11) Negligence Per Se - Violation of California Finance Lending Law; (12) Violation of California Business and Professions Code Section 17200; and (13) Fraud (set from another summon issued on 10-16-20 per amended complaint) (cont'd from 1-7-21 per order approving stip to cont. status conference entered 12-23-20)

Docket 13

***** VACATED *** REASON: CONTINUED TO 5-13-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANTS TO CONTINUE STATUS CONFERENCE AND HEARING
ON MOTION TO DISMISS ENTERED 3-08-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski
Timothy W Evanston

Corefund Capital, LLC

Pro Se

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

Thursday, March 11, 2021

Hearing Room 5B

11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

GMA USA, LLC

Pro Se

YES Funding Services, LLC

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe
Rafael R Garcia-Salgado

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Thursday, March 11, 2021

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC et al

#10.00 Motion To Dismiss First Amended Complaint Pursuant To Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6)
(cont'd from 1-7-21 per order approving stip between plaintiff and defendant capcall,llc to cont. hrg on mtn to dismiss entered 12-17-20)

Docket 20

*** VACATED *** REASON: CONTINUED TO 5-13-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN PLAINTIFF AND DEFENDANTS TO CONTINUE STATUS CONFERENCE AND HEARING ON MOTION TO DISMISS ENTERED 3-08-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski
Timothy W Evanston

Corefund Capital, LLC

Represented By
Lei Lei Wang Ekvall

GMA USA, LLC

Represented By
Lei Lei Wang Ekvall

YES Funding Services, LLC

Represented By
Lei Lei Wang Ekvall

Plaintiff(s):

Richard A. Marshack

Represented By

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

Thursday, March 11, 2021

Hearing Room 5B

11:00 AM

CONT... **i.i. Fuels, Inc.**

Chapter 7

Robert P Goe
Rafael R Garcia-Salgado

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Monday, March 15, 2021

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) (con't from 11-13-20 per order granting joint stip. of counsel to cont. the trial date entered 11-06-20)

Docket 1

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, March 16, 2021

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/1617643429>

ZoomGov meeting number: 161 764 3429

Password: 014044

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, March 16, 2021

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.
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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, March 16, 2021

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, March 16, 2021

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**SANTANDER CONSUMER USA INC.
Vs
DEBTOR**

Docket 106

Tentative Ruling:

Tentative for 3/16/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Randall P Mroczynski

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

Tuesday, March 16, 2021

Hearing Room 5B

10:00 AM

8:19-14802 Christi McGowan and Matthew McGowan

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-16-21)

**LAKEVIEW LOAN SERVICING, LLC
Vs.
DEBTOR**

Docket 38

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY UNDER 11 USC SECTION 362 ENTERED 3-15-
21**

Tentative Ruling:

Tentative for 3/16/21:

Is an APO stipulation offered, as reported last time?

Grant. Appearance is optional.

Party Information

Debtor(s):

Christi McGowan

Represented By
Gary Polston

Joint Debtor(s):

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**

Tuesday, March 16, 2021

Hearing Room 5B

10:00 AM

8:20-10220 Antonio Vega Benavides

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-09-21)**

**SELECT PORTFOLIO SERVICING INC.
Vs
DEBTOR**

Docket 49

Tentative Ruling:

Tentative for 3/16/21:
Nothing further has been offered nor an explanation. Appearance: required

Tentative for 2/9/21:
The court is of course sympathetic to everyone suffering from the pandemic. But it would help if some proposal regarding adequate protection were offered. Will the plan be modified, and if so, when? What is the timetable regarding working out a mortgage assistance with lender, as noted in declaration? No tentative.

Party Information

Debtor(s):

Antonio Vega Benavides

Represented By
Sunita N Sood

Movant(s):

Select Portfolio Servicing Inc., 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, March 16, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#4.00 Motion For Relief From The Automatic Stay REAL PROPERTY
(cont'd from 12-15-20)

**1st UNITED SERVICES CREDIT UNION
Vs.
DEBTOR**

Docket 129

Tentative Ruling:

Tentative for 3/16/21:

Nothing further has been filed. Is there any basis for keeping any part of the stay in effect (noting that partial relief was granted by order entered December 29?) Grant absent APO or further explanation.

Appearance: required

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

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

Tuesday, March 16, 2021

Hearing Room 5B

10:00 AM

CONT... Hoan Dang and Diana Hongkham Dang

Chapter 7

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

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, March 16, 2021

Hearing Room 5B

10:00 AM

8:20-13190 Michael Robert Yates

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-09-21)**

**MILESTONE FINANCIAL, LLC dba MERS FUND I
Vs
DEBTOR**

Docket 24

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION FOR RELIEF FROM THE AUTOMATIC
STAY FILED 3-9-21.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Robert Yates

Represented By
Raj T Wadhvani

Movant(s):

Milestone Financial LLC dba Mers

Represented By
Harris L 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**

Tuesday, March 16, 2021

Hearing Room 5B

10:00 AM

8:21-10388 Marisela Ketcham

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

**AJAX MORTGAGE LOAN TRUST 2019-A
Vs
DEBTOR**

Docket 9

Tentative Ruling:

Tentative for 3/16/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Marisela Ketcham

Represented By
Arlene M Tokarz

Movant(s):

Ajax Mortgage Loan Trust 2019-A,

Represented By
Renee M Parker

Trustee(s):

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 17, 2021

Hearing Room 5B

9:30 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/1609509920>

ZoomGov meeting number: 160 950 9920

Password: 575241

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, March 17, 2021

Hearing Room 5B

9:30 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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Docket 0

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

Wednesday, March 17, 2021

Hearing Room 5B

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, March 17, 2021

Hearing Room 5B

9:30 AM

8:20-13169 Jessica De Jesus Lopez

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation (RE: 2016 Honda Civic - \$8,654.22) [ES CASE]

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessica De Jesus Lopez	Pro Se
------------------------	--------

Trustee(s):

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

Wednesday, March 17, 2021

Hearing Room 5B

9:30 AM

8:20-13179 Mauricio Alonso Franco

Chapter 7

**#2.00 Reaffirmation Agreement Between Debtor and Wells Fargo Bank N.A.,
d/b/a Wells Fargo Auto (RE: 2012 Honda Civic - \$5,225.17)**

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mauricio Alonso Franco

Represented By
Marlin Branstetter

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, March 17, 2021

Hearing Room 5B

9:30 AM

8:20-13285 Daniel Paul Wilcox

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and Golden 1 Credit Union
(RE: 2015 Honda Fit - Amount: \$9,039.43) [SC Case]

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Paul Wilcox

Represented By
Peter M Lively

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, March 17, 2021

Hearing Room 5B

9:30 AM

8:20-13336 Kimberly Dawn Peterson

Chapter 7

**#4.00 Motion for Approval of Reaffirmation Agreement with Bank of the West
(RE: 2017 Chrysler Pacific - \$26,596.13) [ES CASE]**

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kimberly Dawn Peterson

Represented By
Brian J Soo-Hoo

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, March 17, 2021

Hearing Room 5B

9:30 AM

8:21-10068 Damdindorj Dorjsembe

Chapter 7

#5.00 Reaffirmation Agreement Between Debtor and Wells Fargo Bank NA, d/b/a Wells Fargo Auto (RE: 2014 Toyota Corolla - \$6,253.44) [ES CASE]

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Damdindorj Dorjsembe

Represented By
Elena Steers

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, March 17, 2021

Hearing Room

5B

9:30 AM

8:21-10080 Jae Woo Lee and Kyung A Kang

Chapter 7

#6.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (RE: 2017 Toyota Sienna - Amount: \$6,159.75) [SC Case]

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jae Woo Lee Pro Se

Joint Debtor(s):

Kyung A Kang 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, March 17, 2021

Hearing Room 5B

1:30 PM

8:20-13190 Michael Robert Yates

Chapter 13

**#1.00 Confirmation of Chapter 13 Plan
(cont'd from 1-20-21)**

Docket 2

***** VACATED *** REASON: OFF CALENDAR - ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED 3-09-21**

Tentative Ruling:

Tentative for 1/20/21:

The points raised by the Trustee and secured creditors must be addressed.

Party Information

Debtor(s):

Michael Robert Yates

Represented By
Raj T Wadhvani

Movant(s):

Michael Robert Yates

Represented By
Raj T Wadhvani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 17, 2021

Hearing Room 5B

1:30 PM

8:20-13359 Michael L Duivis

Chapter 13

#2.00 Confirmation Of Chapter 13 Plan
(cont'd from 2-17-21)

Docket 7

Tentative Ruling:

Tentative for 3/17/21:

The Debtor must deal with the trustee's points:

- 1) PLAN PAYMENT DUE. NO PROGRESS SINCE CONTINUANCE.
- 2) NEED BUSINESS BUDGET.
- 3) NO PROVISION FOR PROPERTY TAX AND FTB SECURED/PRIORITY TAX CLAIMS FILED.

Why has nothing been accomplished since last time?

Tentative for 2/17/21:

Is the amended plan opposed?

Party Information

Debtor(s):

Michael L Duivis

Represented By
Mark A Pahor

Movant(s):

Michael L Duivis

Represented By
Mark A Pahor
Mark A Pahor

Trustee(s):

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 17, 2021

Hearing Room 5B

1:30 PM

8:20-13465 Steve Hoon Lee

Chapter 13

**#3.00 Confirmation Of Amended Chapter 13 Plan
(cont'd from 2-17-21)**

Docket 15

Tentative Ruling:

Tentative for 3/17/21:

Will secured creditor #3 be dealt with under the plan? Can this be interlineated?

Party Information

Debtor(s):

Steve Hoon Lee

Represented By
Sanaz Sarah Bereliani

Movant(s):

Steve Hoon Lee

Represented By
Sanaz Sarah Bereliani
Sanaz Sarah Bereliani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 17, 2021

Hearing Room 5B

1:30 PM

8:20-13469 Patricia Elaine Anderson-Hooper

Chapter 13

**#4.00 Confirmation Of Chapter 13 Plan
(cont'd from 2-17-21)**

Docket 2

Tentative Ruling:

Tentative for 3/17/21:

According to trustee, declaration re secured payments and 2019 tax returns are needed.

Party Information

Debtor(s):

Patricia Elaine Anderson-Hooper

Represented By
David Lozano

Movant(s):

Patricia Elaine Anderson-Hooper

Represented By
David Lozano
David Lozano
David Lozano
David Lozano
David Lozano
David Lozano

Trustee(s):

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 17, 2021

Hearing Room 5B

1:30 PM

8:21-10014 Judy Carol Anderson

Chapter 13

#5.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED 1-29-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Judy Carol Anderson

Represented By
Scott Kosner

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, March 17, 2021

Hearing Room 5b

1:30 PM

8:21-10045 Amparo M Ulloa

Chapter 13

#6.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amparo M 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, March 17, 2021

Hearing Room 5B

1:30 PM

8:21-10117 Irving A Marquez

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan

Docket 6

*** VACATED *** REASON: OFF CALENDAR - ORDER AND NOTICE
OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL OF CHAPTER 13 ENTERED 3-05-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Irving A Marquez

Represented By
David R Chase

Movant(s):

Irving A Marquez

Represented By
David R Chase
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, March 17, 2021

Hearing Room 5B

1:30 PM

8:21-10164 Rhonda Hall Alter

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan .

Docket 15

Tentative Ruling:

Tentative for 3/17/21:

How does debtor intend to deal with US Bank's objection?

Party Information

Debtor(s):

Rhonda Hall Alter

Represented By
Hasmik Jasmine Papian

Movant(s):

Rhonda Hall Alter

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
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Wednesday, March 17, 2021

Hearing Room 5B

3:00 PM

8:16-12067 Norberto Valladares

Chapter 13

**#9.00 Trustee's Motion to Dismiss Case
(cont'd from 2-17-21)**

Docket 66

Tentative Ruling:

Tentative for 3/17/21:

A motion to modify was filed February 23 which the Trustee has recommended. No order has been uploaded yet. Would this modification obviate need for dismissal?

Tentative for 2/17/21:

The reported efforts to resolve defaults and other issues is vague. Grant unless current or the Trustee agrees to more time.

Party Information

Debtor(s):

Norberto Valladares

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#10.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision

Docket 59

Tentative Ruling:

Tentative for 3/17/21:

Grant unless feasibility issue cured or modification motion on file.

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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3:00 PM

8:16-12982 Jack Naffziger and Kimberly Naffziger

Chapter 13

#11.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 48

Tentative Ruling:

Tentative for 3/17/21:

Can the modification motion be granted on terms recommended by Trustee via comments filed February 2, 2021? If so does that resolve the dismissal motion?

Party Information

Debtor(s):

Jack Naffziger

Represented By
Julie J Villalobos

Joint Debtor(s):

Kimberly Naffziger

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, March 17, 2021

Hearing Room 5B

3:00 PM

8:16-14146 Jonnie Lou Stewart

Chapter 13

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

Docket 72

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 1-13-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonnie Lou Stewart

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, March 17, 2021

Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

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

Docket 52

Tentative Ruling:

Tentative for 3/17/21:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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3:00 PM

8:18-12963 Emily Frevert

Chapter 13

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

Docket 38

Tentative Ruling:

Tentative for 3/17/21:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Emily Frevert

Represented By
Christopher P Walker

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:18-14134 Lam Dang Nguyen

Chapter 13

#15.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 1-20-21)

Docket 35

Tentative Ruling:

Tentative for 3/17/21:
Continue to coincide with recent modification motion filed.

Tentative for 1/20/21:
Grant unless current or a new modification motion on file.

Appearance: required

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

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3:00 PM

CONT... Lam Dang Nguyen

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, March 17, 2021

Hearing Room

5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#16.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 1-20-21)

Docket 69

Tentative Ruling:

Tentative for 3/17/21:

Debtor filed a modification motion November 3, 2020 upon which the Trustee filed comments recommending against. Debtor has taken no other action. Should that be set for hearing? Continue to coincide with any hearing regarding modification. If none is set, grant dismissal motion on continued hearing April 14.

Tentative for 1/20/21:

Grant unless current. Appearance: required

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

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3:00 PM

CONT... Wendie Lorraine Brigham

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, March 17, 2021

Hearing Room 5B

3:00 PM

8:19-12479 Judie Kay Brust

Chapter 13

**#17.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 1-20-21)**

Docket 33

Tentative Ruling:

Tentative for 3/17/21:
Grant unless current or modification motion on file.

Tentative for 1/20/21:
Grant unless current or modification motion on file.

Appearance: required

Party Information

Debtor(s):

Judie Kay Brust

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

3:00 PM

8:20-10655 Jose Magana

Chapter 13

**#18.00 Trustee's Motion To Dismiss Case
(cont'd from 2-17-21)**

Docket 33

Tentative Ruling:

Tentative for 3/17/21:

Does order to modify/suspend entered March 2 obviate this motion?

Tentative for 2/17/21:

Continue to coincide with modification motion filed February 3.

Appearance: required

Party Information

Debtor(s):

Jose Magana

Represented By
Scott Dicus

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:20-12509 Jane Kraus

Chapter 13

#19.00 Trustee's Motion To Dismiss Case

Docket 33

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL THE MOTOIN TO DISMISS FILED 2-17-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jane Kraus

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:18-10136 Rilla Ann Huml

Chapter 13

**#20.00 Motion to Reopen Chapter 13 Case And (2) To Amend Schedule Of Assets.
(set from order entered 2-18-21)**

Docket 86

Tentative Ruling:

Tentative for 3/17/21:
Grant.

Party Information

Debtor(s):

Rilla Ann Huml

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:14-14420 Vivian Anhvy Vu

Chapter 13

#21.00 Motion To Remove Abstract Of Judgment, For Compensatory And Punitive Damages, And Attorney's Fees And Costs Against Creditor Discover Bank For Intentionally Violating The Automatic Stay And Discharge, And Refusing To Remove The Abstract Of Judgment
(cont'd from 2-17-21)

Docket 84

Tentative Ruling:

Tentative for 3/17/21:

The tentative posted below was composed just preceding the last hearing. It was not posted as the court was informed a settlement was at hand. But it would seem the settlement did not occur: therefore, issue OSC in accordance with the tentative decision from February 17. See below:

This is Debtor's motion to remove an abstract of judgment, for compensatory and punitive damages, and attorney's fees and costs against creditor Discover Bank ("Creditor") for intentionally violating the automatic stay and discharge injunction, and refusing to remove the abstract of judgment. Creditor opposes the motion.

1. Factual Background

As alleged by Debtor, the facts are as follows:

The Debtor filed her Chapter 13 Petition on July 16, 2014, and the Plan was confirmed on January 7, 2015. She completed her Chapter 13 Plan and received her Discharge on October 17, 2019. The case was closed on November 18, 2019 and recently reopened. The Debtor owns her home located at 12242 Ditmore Street, Garden Grove, CA 92841, and the home was listed in Schedule "A." Additionally. Creditor was listed in Schedule "F"

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CONT...

Vivian Anhvy Vu

Chapter 13

and Creditor filed a Proof of Claim on March 19, 2015.

The Debtor was previously married to Khanh Nguyen ("ex-husband"). The ex-husband filed for divorce in 2010, and the divorce became final in February of 2015. In the divorce the Debtor retained the Home and became the sole owner. Creditor obtained a Judgment against the ex-husband only on June 19, 2015 in the amount of \$18,854.47 (almost a year post-petition and five years after he filed for divorce from Debtor), and recorded an abstract of judgment against the home on May 3, 2016 (almost two years post-petition). The Debtor and her attorney have asked the attorney for Discover Bank, The Winn Law Group, several times for a complete copy of the abstract yet it reportedly took several requests. The judgment against the Debtor's ex-husband was obtained five years after he filed for divorce. The abstract was recorded more than a year after Creditor filed its Proof of Claim. The Debtor is not a judgment debtor on this judgment, so Creditor is apparently trying to collect on a judgment from someone other than the judgment debtor. A demand was made to Creditor to remove the abstract however neither Creditor nor its attorneys have done so.

The Debtor learned of the abstract of judgment beginning in December of 2020 while she was in escrow to sell her home. During escrow, the escrow company sent a portion of the title report to the Debtor informing her of the abstract. Until then, the Debtor was apparently completely unaware of the judgment or the abstract. Creditor reportedly wanted \$28,866.80 paid through the escrow to satisfy the judgment, but the Debtor refused to pay it because she does not owe the money to Creditor. Because of the abstract, Debtor alleges, the buyer cancelled escrow and the sale of the home fell through.

Debtor apparently reached out to counsel for Creditor several times in late 2020 to clear up any alleged misunderstanding, but to no avail. Debtor reportedly offered counsel for Creditor documentary evidence of (giving Creditor benefit of the doubt) the error but was allegedly ignored. As a result of this alleged misconduct, Debtor asserts that Creditor has engaged in willful

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CONT...

Vivian Anhvy Vu

Chapter 13

violation of the automatic stay and discharge injunction, which entitles her to compensatory and punitive damages, as well as reasonable attorney's fees.

2. Did Creditor Violate the Automatic Stay and Discharge Injunction?

Creditor argues that Debtor has not put forth any competent evidence other than an illegible and incomplete title report, which Creditor asserts does not establish the actual state of title. As such, Creditor argues, Debtor has failed to establish that a lien on the property exists. In fact, Creditor argues that final judgment in Debtor's marriage dissolution action, which resulted in Debtor being awarded the subject property in full, was entered more than a year before Creditor obtained the abstract of judgment against Debtor's ex-husband. Thus, Creditor argues, the abstract of judgment would not and could not have attached as a lien to the subject property. Under this line of thinking any threat of a lien on title would have been an error on the title company's part and not attributable to Creditor [but failure to cooperate post discharge may be harder to explain].

As recently as 2019, the United States Supreme Court in *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) articulated that the proper standard for finding a violation of the discharge injunction is whether there is "no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order." The *Taggart* court deliberately left open whether such a standard should apply to alleged violations of the automatic stay. *In re Freeland*, 2020 WL 4726580, at *2 n.3 (Bankr. D. Or. Aug. 12, 2020).

The court is troubled by the Debtor's allegations that directly implicate a violation of the discharge injunction, and if true, leaves no objectively reasonable basis for concluding that Creditor's conduct might be lawful under the discharge order. Even more troubling is the allegation that as recently as

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CONT...

Vivian Anhy Vu

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December of 2020, when Debtor was in escrow, Creditor attempted to collect on its judgment debt through the escrow process. See Debtor's motion, p. 4 lines. 9-19. The court sees no objectively reasonable basis for such a demand and so this calls into question Creditor's protestations of innocence. The court is unable to locate any documentary evidence that such an attempt was made by Creditor to collect on its judgment debt through escrow in Debtor's failed sale of her property. Creditor does not directly address this attempt in its opposition. If such documentary evidence does exist, it should be clearly brought to the court's attention as Creditor's opposition to this motion seems to concede that it would have no legal right to collect on the judgment from Debtor. Even if the attempt was to collect on a different debt, such an attempt against Debtor or from Debtor's property could be contumacious as it does not appear Creditor obtained relief from the automatic stay (or discharge injunction) and a simple review of documents available would suggest no right to make a demand upon this escrow.

Debtor's damages are possibly speculative, at least at this point. A sale, even one in escrow, might still fall through for many other reasons, a cloud on title being just one. The court would need to see a more definitive link between the cloud on title and the sale falling through. Some analysis must be also made on whether the amount of lost sale price should result in as high an amount of alleged damages. What are the prospects of a new sale, and at what price? Again, if such evidence exists in the record, the court's attention should be clearly drawn to where such information may be found.

The court also has questions about how the abstract of judgment even showed up on Debtor's title report in the first place if her ex-husband had no interest in the property at the time the abstract of judgment was recorded. Was this a title company error? Over caution? But the court is also interested as to why no cooperative action was taken given the communications from both Debtor and Debtor's counsel considering what seems an obvious imposition upon the Debtor. This is a chapter 13 proceeding with extremely

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CONT...

Vivian Anhvy Vu

Chapter 13

limited resources. The court takes a very dim view of situations in which litigants fail to resolve issues through even modest cooperation and needlessly involve the court while driving up administrative costs. If the parties agree that the abstract of judgment should not have attached to Debtor's property, *why, then, is this motion even necessary?* Despite the citation to *City of Chicago. v. Fulton*, Sup.Ct. No. 19-357, 592 U.S. _____, 2021 U.S. LEXIS 496 (Jan. 14, 2021) Creditor is clearly playing with fire. This case is distinguishable from *Fulton* in many ways including that this lien (to the extent there ever was a 'lien') arguably went on *after* the petition and so even the most liberal reading of §362(a)(3) as interpreted by the Supreme Court in *Fulton* has little application here. Besides, several other provisions such as §§363(a)(1) or (6) "to recover a claim against the debtor that arose before the commencement of the case..." or (4) "to enforce any lien...." seemingly apply. Creditor's failure to cooperate is frankly inexplicable and looks like it could be an improper assertion of leverage to extort an advantage; Creditor must hope that is not found to be the case.

This court takes violations of its orders seriously, and it is still unclear whether a violation of either the discharge injunction or automatic stay occurred. Debtor's right to a discharge after completing her plan is an important concern. The court will issue an Order to Show Cause why Creditor should not be held in contempt specifically targeted to find out: (1) how an abstract of judgment attributable only to Debtor's ex-husband ended up on Debtor's title report for what was adjudicated to be her separate property; (2) what, if any, efforts Creditor made to involve itself in the sale of Debtor's property in December of 2020 and whether it made improper demands; and (3) a legally cognizable measure of damages. On the issue of damages, Debtor should be prepared to present evidence that Creditor's purported unlawful involvement in the sale or failure to remove any improper cloud on title, caused the sale to fall through and what was the amount of economic loss. Attorneys fees and punitive damages are also in the mix but need support by evidence. Creditor is admonished to consider, as may relate to

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CONT... Vivian Anhvy Vu

Chapter 13

questions of willfulness and punitive damages, how its actions should be judged in what could be construed to be an attempt to improperly exert leverage to collect a discharged debt from an improper party through dubious means.

Continue hearing to coincide with an OSC directed to Creditor to explain itself and requiring Debtor to provide supporting evidence including on the issue of willfulness.

Tentative for 2/17/21:
Continuance?

Party Information

Debtor(s):

Vivian Anhvy Vu

Represented By
Donald Blake Serafano
David Brian Lally

Movant(s):

Vivian Anhvy Vu

Represented By
Donald Blake Serafano
David Brian Lally

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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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/1611836699>

ZoomGov meeting number: 161 183 6699

Password: 578121

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 -

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10:30 AM

8:21-10247 Wilfredo Martinez

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**VW CREDIT LEASING, LTD
Vs
DEBTOR**

Docket 12

Tentative Ruling:

Tentative for 3/23/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Wilfredo Martinez

Pro Se

Movant(s):

VW Credit Leasing, LTD.

Represented By
Kirsten Martinez

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

10:30 AM

8:21-10255 Amrita Vanjani

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**DAIMLER TRUST
Vs
DEBTOR**

Docket 11

Tentative Ruling:

Tentative for 3/23/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Amrita Vanjani

Represented By
Leonard M Shulman

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, March 23, 2021

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#3.00 Debtor's Motion to Convert Case From Chapter 7 to 11.
(cont'd from 2-02-21 per order granting stip. re: the cont. hrg. on debtor's
mtn to convert entered 1-14-21)

Docket 122

Tentative Ruling:

Tentative for 3/23/21:

Does the Rule 9019 motion filed March 9, 2021 resolve this?

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

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CONT... Deborah Jean Hughes

Chapter 7

Matthew C Mullhofer
Michael Jones

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#4.00 Chapter 7 Trustee's Motion for Entry of an Order to Compel Debtor's Attendance at 11 U.S.C. Section 341(a) Meeting of Creditors Under 11 U.S.C. Sections 105(A), 341(A), and 521(A)(3)

Docket 278

Tentative Ruling:

Tentative for 3/23/21:

Grant. Was Mr. Boyce served? He must be with new order which may include admonition about issuing a warrant.

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, March 23, 2021

Hearing Room 5B

11:00 AM

8:17-14117 Richard Paul Herman

Chapter 7

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

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

RINGSTAD & SANDERS LLP, CHAPTER 7 TRUSTEE'S ATTORNEY

HAHN FIFE & COMPANY, ACCOUNTANT

UNITED STATES TRUSTEE - FEES

Docket 187

Tentative Ruling:

Tentative for 3/23/21:
Approved, fees and costs allowed as proposed.

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

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

Tuesday, March 23, 2021

Hearing Room 5B

11:00 AM

8:19-15027 Mohamed M Elhendi and Samar Abdelghany

Chapter 7

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

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

Docket 144

Tentative Ruling:

Tentative for 3/23/21:
Allow as prayed.

Party Information

Debtor(s):

Mohamed M Elhendi Pro Se

Joint Debtor(s):

Samar Abdelghany 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, March 24, 2021

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/1618731773>

ZoomGov meeting number: 161 873 1773

Password: 602584

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**

Wednesday, March 24, 2021

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**

Wednesday, March 24, 2021

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, March 24, 2021

Hearing Room

5B

10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

#1.00 Motion For Order: (1) Authorizing Sale Of Real Property, Free And Clear Of Liens Pursuant To 11 USC 363(b) and (f); (2) Approving Overbidding

Docket 116

Tentative Ruling:

Tentative for 3/24/21:

Grant. First and second mortgages and sales costs can be paid from escrow. Balance of the price is to be held in counsel's trust account pending further order respecting allowance and characterization of claims.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Christopher C Barsness

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

Wednesday, March 24, 2021

Hearing Room

5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#2.00 Objection to Claims Of RBS Citizens, N.A., Citizens Financial Group, Inc
(cont'd from 2-24-21 per order approvg stip. to cont. objection to claims
entered 2-22-21)

Docket 379

*** VACATED *** REASON: CONTINUED TO 4-28-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
HEARING ON DEBTOR'S OBJECTION TO CLAIMS OF RBS CITIZENS,
N.A. CITIZENS FINANCIAL GROUP, INC ENTERED 3-23-21

Tentative Ruling:

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Movant(s):

Ron S Arad

Represented By
G Bryan Brannan

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

Thursday, March 25, 2021

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/1619293823>

ZoomGov meeting number: 161 929 3823

Password: 702307

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, March 25, 2021

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:

- NONE LISTED -

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

Thursday, March 25, 2021

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
(cont'd from 2-11-21 per order on stip. to cont. s/c entered 12-18-20)**

Docket 1

Tentative Ruling:

Tentative for 3/25/21:
Status? Is the case settled? Will there be a stipulation?

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

8:19-12162 John Louis Katangian

Chapter 11

Adv#: 8:19-01181 City of Los Angeles v. Katangian

**#2.00 STATUS CONFERENCE RE: Complaint to Determine Non-dischargeability of Debt
(cont'd from 12-03-20)**

Docket 1

Tentative Ruling:

Tentative for 3/25/21:

The court will issue a stay of the proceeding pending results of the state court appeal.

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

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

CONT... John Louis Katangian

Chapter 11

Defendant(s):

Shelline Marie Katangian

Pro Se

Joint Debtor(s):

Shelline Marie Katangian

Represented By
Michael R Totaro

Plaintiff(s):

City of Los Angeles

Represented By
Wendy A Loo

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

Thursday, March 25, 2021

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 7-30-20)**
(cont'd from 1-14-21 per order on stip. to allow defendants until March 1, 2021 to file a firsrst responding document and to cont. the s/c currently set for january 14, 2021 entered 1-12-21)

Docket 1

Tentative Ruling:

Tentative for 3/25/21:

Continue to coincide with motion to approve compromise filed March 9.

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.

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

CONT... Deborah Jean Hughes

Chapter 7

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01093 Romex Textiles, Inc. v. Kim

**#4.00 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 2-25-21)**

Docket 1

Tentative Ruling:

Tentative for 3/25/21:
Status?

Tentative for 2/25/21:
Status? Default entered?

Appearance: optional

Tentative for 1/28/21:
Status on entry of default? Appearance: optional

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

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

CONT... Katie Ki Sook Kim

Chapter 7

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

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

Thursday, March 25, 2021

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

#5.00 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 2-25-21)

Docket 1

Tentative Ruling:

Tentative for 3/25/21:

When will the default judgment motion with supporting papers be filed?

Tentative for 2/25/21:

What is status of default judgment application?

Tentative for 1/28/21:

Status on filing of motion supporting default judgment? Appearance: optional

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

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

CONT... Heather Huong Ngoc Luu

Chapter 7

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, March 25, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:21-01001 Marshack v. American Express National Bank

#6.00 STATUS CONFERENCE RE: Complaint For: 1) Avoidance of Transfers Pursuant to 11 USC Section 544(b) and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05; 2) Avoidance of Transfers Pursuant to 11 USC Section 548(a)(1)(B); 3) Recovery of Avoided Transfers Pursuant to 11 USC Section 550; and 4) Disallowance of Claims Pursuant to 11 USC Section 502

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-27-21 At 10:00 A.M.
PER ORDER APPROVING STIPULATION TO EXTEND RESPONSE
DATE TO PLAINTIFF'S AMENDED COMPLAINT AND CONTINUE
STATUS CONFERENCE ENTERED 3-16-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

American Express National Bank

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:21-01002 Marshack v. Swift Financial Corporation et al

#7.00 STATUS CONFERENCE RE: Complaint For: 1) Usury; 2) Unconscionability; 3) Negligence Per Se--Violation of California Finance Lending Law; 4) Violation of California Business and Professions Code Section 17200; 5) Unjust Enrichment/Disgorgement; 6) Fraud; 7) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 USC Section 544(b) and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05; 8) Determination of Liens Pursuant to 11 USC Sections 502, 506 and 551; and 9) Injunction and Declaratory Relief

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-27-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 3-10-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Swift Financial Corporation

Pro Se

Paypal, Inc.

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

8:18-10582 David R. Garcia

Chapter 7

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

**#8.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(con't from 9-10-20 per stip. & order entered 8-07-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-06-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE AND DEADLINE TO FILE PRE-TRIAL MOTIONS
ENTERED 3-17-21**

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, March 25, 2021

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, March 25, 2021

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

#9.00 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 1-28-21 per order appr. stip. to con't entered 1-27-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-22-21 AT 10:00 A.M.
PER ORDER APPROVING THE STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 3-09-21**

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
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, March 25, 2021

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

#10.00 PRE-TRIAL 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) (set from s/c hrg held on 10-15-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-08-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE ENTERED 3-09-21**

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.

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

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Thursday, March 25, 2021

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

**#11.00 PRE-TRIAL 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))
(set from s/c hrg held on 10-01-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-24-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE DISCOVERY
CUT-OFF DATE. DEADLINE FOR PRE-TRIAL MOTIONS AND PRE-
TRIAL CONFERENCE, PENDING COMPLETION OF MEDIATION
ENTERED 1-20-21**

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

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

CONT... M3Live Bar & Grill, Inc.

Chapter 7

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, March 25, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#12.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 51 Filed By Lakeview
Loan Servicing, LLC
(set from s/c hrg held on 11-03-20)

Docket 249

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE
CORPORATION AND LAKEVIEW LOAN SERVICING, LLC
RESOLVING THE OBJECTION TO AND MOTION TO DISALLOW
PROOF OF CLAIM #51 ENTERED 3-08-21**

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

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

Thursday, March 25, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#13.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 53 Filed By Lakeview
Loan Servicing, LLC
(set s/c hrg held on 11-03-20)

Docket 251

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE
CORPORATION AND LAKEVIEW LOAN SERVICING, LLC
RESOLVING THE OBJECTIONS TO AND MOTION TO DISALLOW
PROOF OF CLAIM NO. 53 ENTERED 3-02-21**

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**

Thursday, March 25, 2021

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

#14.00 Plaintiff's Motion For Attorney's Fees After Judgement As Prevailing Parties

Docket 60

Tentative Ruling:

Tentative for 3/25/21:

This is plaintiffs/debtors, Daniel and Ellen Powers' ("Debtors") motion for attorney's fees after judgement as prevailing parties. The motion is opposed by defendant, Alamitos Real Estate Partners II, LP ("Alamitos"). By this motion, Debtors request that the court approve attorney's fees in the amount of \$332,275.00, which is the product of the lodestar amount (\$132,910) and a multiplier of 2.5 to compensate Debtors' counsel for taking the case on contingency and preserving more money for the estate by defeating Alamitos. A detailed factual recitation of this case is contained in this court's memorandum of decision and is incorporated by reference.

It is best to begin by observing that per the notice of motion, the opposition was undeniably filed late, which causes the court to consider disregarding it as this court expects its rules to be observed. Furthermore, Debtors' counsel asserts that failing to timely file an opposition was a deliberate decision by Alamitos. Alamitos does not offer any reason why the failure to timely oppose the motion should be overlooked.

However, giving Alamitos the benefit of the doubt, a few issues are apparently unopposed. There is no dispute that California Code of Civil Procedure §1717 is the operative statute. There is no dispute regarding the Debtors' status as the prevailing party and, as such, that they are entitled to reasonable attorney's fees under the various contracts. There is also no direct dispute regarding Debtors' use of a multiplier of 2.5 to calculate Debtors' attorney's fees (but the court has its own doubts as discussed below). Rather,

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Alamitos focuses on the lodestar request as excessive.

The disagreement in this motion has to do with alleged excessive, duplicative, and unreasonable billing by Debtors' counsel in certain categories. Alamitos argues that the court should cut the attorney's fees award by 33% across the board.

Three conditions must be satisfied under California Code of Civil Procedure § 1717. "First the action in which the fees are incurred must be an action 'on a contract', a phrase that is liberally construed. Second, the contract must contain a provision stating that attorney's fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party. And third, the party seeking fees must be the party who 'prevail[ed] on the contract', meaning... 'the party who recovered a greater relief in the action on the contract.' Cal. Civ Code § 1717(b)(1)." See *In re Penrod*, 802 F.3d 1084, 1087-88 (2015) ("Whether [creditor] actually would have sought attorney's fees had it prevailed (something it denies) is immaterial. What matters is whether it could have sought fees under the contract, and here it could indeed have done so.") *Penrod*, 802 F.3d at 1090.

Where one side obtains a judgment that is a "simple, unqualified win" on solely a contract claims, a "trial court ha[s] no discretion to deny [those parties] their attorney's fees under section 1717[.]" *Hsu v. Abbara*, 9 Cal. 4th 863, 876 (1995). Thus, "[w]hen a party obtains a simple, unqualified victory by completely prevailing on or defeating all contract claims in the action and the contract contains a provision for attorney fees, section 1717 entitles the successful party to recover *reasonable* attorney fees incurred in prosecution or defense of those claims." *Scott Co. v. Blount, Inc.*, 20 Cal. 4th 1103, 1109 (1999) (italics added). Additionally, while it is ordinarily true that a party can only be awarded attorneys' fees under Section 1717 for efforts to prevail on contract claims, such that fees spent on any other claims (like tort claims) are not recoverable, fees need not be apportioned when incurred for representation on issues common to contract and non-contractual claims that

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are "inextricably intertwined." *Abdallah v. United Savings Bank*, 43 Cal. App. 4th 1101, 1111 (1996). That is, where a party pursues both contract and non-contract claims, but it is "impracticable, if not impossible, to separate the multitude of conjoined activities into compensable or non-compensable time units," apportionment is not necessary. *Id.* "Apportionment of a fee award between fees incurred on a contract cause of action and those incurred on other causes of action is within the trial court's discretion[.]" *Id.*

The lodestar-multiplier method begins with a calculation of time spent and reasonable hourly compensation of each attorney and paralegal who worked the case. Then to compensate counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in awarding attorney's fees. California courts often increase the base lodestar with a multiplier after considering: (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation; (5) the amount involved and the results obtained on behalf of the class by client by plaintiff's counsel; and (6) the reaction of the class members. See *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1810 n.21. However, no rigid formula applies, and each factor should be considered only "where appropriate". See *Dept of Transp. v. Yuki* 31 Cal. App. 4th 1754, 1771 (1995); see also *Serrano*, 20 Cal. 3d at 49.

Alamitos puts forth very little that would persuade the court that Debtors' are requesting an unreasonable attorney's fee award, at least on the lodestar amount. For example, Alamitos argues that Debtor should not be allowed to recover attorney's fees for actions taken outside the adversary proceeding, e.g. fees incurred in opposing a motion for relief from the automatic stay. However, as Debtors point out, Alamitos was seeking relief from the automatic stay to enforce its contract, which seems to fit within a

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liberal interpretation of "on a contract" within the meaning of section 1717. Obviously if the relief of stay had been granted the disruption to the estate, not to mention the viability of this action, would have been profound. Alamitos makes vague reference to other instances of billing on "unrelated" matters, but relief from the automatic stay is the only specific reference. Thus, Alamitos does not raise sufficient doubts that the fees requested are unreasonable as being wholly unrelated to the adversary proceeding.

Alamitos next argues that the court should, at least, reduce by half the fees incurred by Guarav Datta. Alamitos argues that this was a straightforward usury law matter and that Mr. Datta performed unnecessary and duplicative tasks adding up to \$5,360. Alamitos also argues that these fees are not supported by Mr. Datta's time records. Debtors cite *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1096 & n.4 (2000), where the court accepted a detailed reconstruction of time spent on certain legal tasks as PLCM did not keep daily billing records. Here, the motion is supported by Mr. Datta's declaration where he asserts that he spent a total of 26.8 hours on this matter at a billing rate of \$200 per hour for a total of \$5,360.00. However, the declaration, rather than being detailed, is fairly general as it lists tasks but gives the court no indication how much time was spent on each task. In bankruptcy matters this practice is described as "lumping" and is to be discouraged since it leaves the court very little basis with which to assess any item billed as reasonable. Thus, the court will reduce this portion of the fees by half, for a new total of \$2,680.00.

Alamitos next complains that too much time is billed for what could be construed as clerical or administrative tasks. Indeed, Alamitos cites several cases from different circuits where courts held that attorneys cannot recover fees for tasks that are purely administrative or clerical in nature. In reply, Debtors do not cite countervailing authority, but only argue that since their counsel is a solo practitioner with little to no support staff, counsel used appropriate "billing judgment." Debtors also correctly point out that Alamitos does not identify any particular entry or entries that would be considered

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administrative or clerical tasks. Alamitos also does not argue that any percentage of the fees should be reduced for this category. Thus, the court is not assisted in making any particular reduction for this category of objection.

Finally, Alamitos argues that Debtors' counsel, given his level of experience, spent much more time on this matter than was warranted given its allegedly straightforward issues. Alamitos specifies 15 individual time entries, totaling 64.6 hours that it alleges are excessive and unnecessary. Debtors assert that the case was more complex than Alamitos' characterization and that Debtors' counsel billed far less time than he spent working on it. Again, the court is given little assistance but both sides seem to be only appealing to the court's general sense of what is just.

Still, the court harbors its own doubts that the attorney's fees requested are reasonable, at least regarding the multiplier enhancement. The court notes that Debtors' counsel took this case on a contingency-like agreement (representing a debtor in a bankruptcy proceeding is often a *de facto* contingency), which carried the risk of recovering nothing for the many hours spent on the case. The court also notes that by defeating Alamitos in this adversary proceeding, there is likely a larger pot of money for creditors of the estate. Those two considerations weigh in favor of awarding some enhancement. However, the court also observes that this case was not unusually complex and did not involve novel issues of law requiring particularly deft handling or expertise. The court is also giving Debtors' counsel the benefit of the doubt on several categories of billing such that, at a minimum, most of the fees requested will be awarded. Still, 2.5 times the lodestar amount for a matter of this type as an enhancement strikes the court as an unwarranted windfall and unduly harsh against Alamitos. Even two times seems excessive. The right balance is likely 1.5 times the lodestar amount (\$132,910.00), which comes out to \$199,365, less the 50% cut of the paralegal fees (\$2,680), for a grand total of **\$196,685.00**.

Award fees of \$196,685 to plaintiffs.

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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

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8:20-12332 Christine Carlin

Chapter 7

Adv#: 8:20-01162 Jason Frank Law PLC, a professional law corporatio v. Carlin et al

#15.00 Motion To Dismiss Adversary Proceeding Counter/Cross-Claims For Failure To State A Claim Upon Which Relief can be Granted **[F.R.C.P. Rule 12(b)(6)]**
(cont'd from 2-25-21)

Docket 8

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF AND
REQUEST TO TAKE OFF-CALENDAR THE MARCH 25, 2021
CONTINUED HEARING RELATED TO THE NARROW ISSUE
DISCUSSED AT THE PRIOR HEARING ON FRANK'S MOTION TO
DISMISS THE COUNTER-CLAIM FILED 3-23-21**

Tentative Ruling:

Tentative for 2/25/21:

This is counter/cross defendants Jason Frank Law PLC's and Jason Frank's (Mr. Frank or collectively "Franks") motion to dismiss the counterclaims brought by debtor and counter/cross claimant Christine Carlin ("Ms. Carlin" or "Debtor") for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). Debtor opposes the motion.

1. Factual Background

Debtor filed these counterclaims against the Franks for damages related to several alleged breaches of her privacy including, but not limited to, third parties impersonating her in phone calls to US Bank and Capital One and obtaining her private banking information. Debtor also alleges that a third party impersonated her husband in a call to Volkswagen Credit. Additionally, the party allegedly impersonating Debtor attempted to break into online accounts including her American Express and Capital One accounts. Based on the context, timing, and facts surrounding these alleged privacy breaches, Debtor believes they were perpetrated by Mr. Frank and/or his agents at his direction and on his behalf. These alleged intrusions all occurred shortly after

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the Superior Court signed Mr. Frank's turnover order on January 9, 2020 as follows:

Date and alleged occurrence:

December 2019 Mr. Frank files a motion to compel production of Ms. Carlin's bank records.

January 7, 2020 Superior Court grants Franks' Proposed Turnover Order requiring Ms. Carlin to turn over money Transferred to her by her former husband, Michael Avenatti ("Avenatti").

January 9, 2020 Superior Court signs order denying Mr. Frank's motion to compel Ms. Carlin to turn her bank records over to him.

January 9, 2020 Superior Court signs Mr. Frank's proposed turnover order requiring Ms. Carlin to turnover money transferred to her from Avenatti.

January 9, 2020 (2:11 P.M.) Imposter attempts access to Ms. Carlin's American Express Online Account.

January 9, 2020 (2:48 P.M.) Imposter calls US Bank pretending to be Ms. Carlin and obtains personal banking information.

January 10, 2020 Imposter calls Volkswagen Credit pretending to be Mr. Carlin and obtains information on his bank accounts including the USAA Account.

January 11, 2020 Imposter calls Capital One pretending to be Ms. Carlin.

February 28, 2020 Mr. Frank obtains a levy on the USAA account.

March 2020 Mr. Frank executes a levy on the USAA account that he

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or his agents learned of by impersonating call to Volkswagen.

Debtor also brings these counterclaims to recover damages for the Franks' alleged misuse of collection procedure by treating the turnover order as license to use whatever collection methods Mr. Frank deemed most expedient in recovering assets in which Avenatti might have had an interest. Debtor argues the proper remedy for non-compliance with a turnover order is a sanction by court order, not aggressive and possibly unlawful collection activity. Debtor maintains that she never violated the turnover order. Debtor asserts that these alleged collection activities have caused damages in the form of emotional distress and loss of funds that were not the subject of the turnover order.

Based on the factual allegations above, the counterclaims contain the following causes of action:

- (1) Unlawful Intrusion into Private Affairs;
- (2) Violation of Common Law Right of Privacy.
- (3) Violation of Constitutional Right of Privacy, Article 1 §1 of the California Constitution.
- (4) Violation of Business and Professions Code §17200; and
- (5) Abuse of Process

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

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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*.

3. Are the Counterclaims Barred by The Litigation Privilege?

Franks argue that all of Debtor's counterclaims are barred by the litigation privilege provided in Cal. Civ. Code §47. They are likely correct.

"The privilege created by Civil Code section 47, though part of the statutory law dealing with defamation, has evolved through case law application into a rather broad protective device which attaches to various classes of persons and applies to types of publications and in types of actions not traditionally identified with the field of defamation." *Rosenthal v. Irell & Manella*, 135 Cal. App. 3d 121, 125 (1982). "The absolute privilege attaches

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to any publication that has any reasonable relation to the action and is made to achieve the objects of the litigation, even though published outside the courtroom and no function of the court or its officers is involved." *Id.* at 126 citing *Pettit v. Levy*, 28 Cal.App.3d 484, 489 (1972). The privilege also extends to *communications*, not just publications, that have "some relation" to a judicial proceeding. *Rubin v. Green*, 4 Cal. 4th 1187, 1193 (1993); *Finton Construction Inc. v. Bidna & Keys APLC*, 238 Cal.App.4th 200, 211 (2015). "The initial departure from limiting the privilege to defamation actions came in *Albertson v. Raboff* 46 Cal.2d 375 [295 P.2d 405] (1956), where it was held that the privilege would serve to bar an action for disparagement of title based on the filing of a *lis pendens*." *Rosenthal*, 135 Cal. App. 3d at 125. Since then, "it has been applied to defeat tort actions based on publications in protected proceedings but grounded on differing theories of liability, to wit, abuse of process...intentional infliction of mental distress... fraud and negligence[.]" *Id.* (internal citations omitted). Statutory claims brought under Business and Professions Code §17200 are covered by §47. *Rubin*, 4 Cal. 4th at 1201-02. "[T]he litigation privilege bars all tort causes of action except malicious prosecution." *Jacob B v. County of Shasta*, 40 Cal. 4th 948, 960 (2007) citing *Kimmel v. Goland*, 51 Cal.3d 202, 209 (2002); *Silberg v. Anderson*, 50 Cal.3d 205, 215 (1990); and *Ribas v. Clark*, 38 Cal.3d 355, 365 (1985). "[T]he litigation privilege applies even to a constitutionally based privacy cause of action." *Jacob B v. County of Shasta*, 40 Cal. 4th at 961. "Obviously, if section 47(b) conflicted with California Constitution, article I, section 1, the statute would have to yield to the Constitution." *Id.* "But the statutory and constitutional provisions are not in conflict; they can and do coexist." *Id.* "[W]e are not aware of... [any authority relating to] the constitutional right to privacy that suggested any intent to limit the scope of this preexisting privilege or to create a right of privacy that would prevail over the privilege." *Id.* "The constitutional right to privacy has never been absolute; it is subject to a balancing of interests." *Id.* "Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest." *Id.* citing *Hill v. National Collegiate Athletic Assn.* 7

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Cal.4th 1, 37-38 (1994). "Among the competing interests against which the privacy right must be balanced is the longstanding litigation privilege." *Jacob B v. County of Shasta*, 40 Cal. 4th at 962. "In adopting the litigation privilege, the *Legislature* has already done the balancing." *Id.* (Italics in original) "Litigants and witnesses could never be free of 'fear of being harassed subsequently by derivative tort actions' if the privilege applied only in some cases but not others." *Id.* (internal citation omitted). "This policy caused us to conclude that the litigation privilege bars all common law and statutory causes of action for invasion of privacy." *Id.* "It applies equally to a constitutionally based cause of action for invasion of privacy. The same compelling need to afford free access to the courts exists whatever label is given to a privacy cause of action." *Id.* The privilege cannot and should not be disregarded simply by pleading around the statute. *Id.*

Here, Debtor attempts to distinguish this case from the cases cited above, mainly *Ribas* and *Jacob B*. For example, Debtor notes that in *Ribas*, the court found that the litigation privilege applied only to statements made in an arbitration hearing, not to illegal eavesdropping. Debtor argues that eavesdropping is analogous to Mr. Frank allegedly impersonating her to gain access to her financial records. But the court notes that the penal code sections (Penal Code §§ 631 and 637.2) implicated in *Ribas* explicitly provided for a monetary remedy for victims of violations of that chapter (\$3,000 [now \$5,000] or three times victim's actual damages, whichever is greater) and an avenue to bring forth an action to recover those damages. *Ribas*, 38 Cal. 3d at 364 citing Penal Code §637.2. Debtor's attempts to distinguish the facts do not convince the court that her causes of action fit within the extremely narrow exceptions to Cal. Civ. Code §47. Indeed, the caselaw instructs the court to find that the litigation privilege is a bar against *all* tort actions except malicious prosecution. Debtor's only real hope of preserving her tort causes of action are to argue that Mr. Frank's alleged conduct does not qualify as a communication having at least "some relation" to a judicial proceeding. It seems rather obvious that, even if Debtor's allegations are true, Mr. Frank was attempting to gain information from

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Debtor's financial institutions subject to a turnover order. Thus, such conduct would appear to have "some relation" to a judicial proceeding. Normally, as this is a Rule 12(b)(6) motion, all doubts are to be resolved in favor of Debtor as the nonmovant. However, relevant caselaw also instructs the court to resolve doubts in favor of applying the litigation privilege. See *Finton Construction Inc.*, 238 Cal.App.4th at 212 ("Any doubt about whether the privilege applies is resolved in favor of applying it. [Citation.]").

The court is not unsympathetic to Debtor's grievances, and the allegations, taken as true, are quite shocking and almost certainly not countenanced by any order of any court. They may also violate ethical constraints upon lawyers. However, courts in California seem to have decided that even tort actions based upon common law or constitutional violations of privacy interests must yield to the litigation privilege and the policy interests contemplated by Cal. Civ. Code §47. Debtor is not without remedies. For example, although her tort actions may be barred, there does not seem to be any barrier to seeking an order to show cause for sanctions from the court who issued the turnover order, which would possibly force Mr. Frank to either deny or justify his alleged actions. After all, it would seem an absurd result to give litigants free reign to behave unlawfully so long as their misconduct had some tenuous connection to a judicial proceeding. Unfortunately for Debtor, both the legislature and the courts have decided that in situations such as this, causes of action in tort are generally not maintainable.

It is plausible that Mr. Frank's alleged conduct implicates at least one criminal statute (Penal Code §530.5(c)(1)) [identity theft]. Unfortunately, Debtor did not include that as a cause of action in her counterclaim and the alleged violation of that penal statute only appears in her opposition to this motion. Debtor also does not cite any direct authority that alleged violations of Penal Code §530.5(c)(1) are immune from the litigation privilege, or even that victims have standing to prosecute thereunder whether criminally or civilly. As noted earlier, the *Ribas* court, analyzing whether a violation of Penal Code § 637.2 might be immune from the litigation privilege in Cal. Civ. Code. §47,

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noted that §637.2 explicitly included a monetary remedy for victims and an avenue to bring such claims. No such monetary remedy is provided for in § 530.5(c)(1), or anywhere else in the statute. The statute does provide for fines, but the court does not read that to equate to a remedy for victims in the same way as §637.2. A violation of Penal Code §530.5(c)(1) may be the sole province of the District Attorney. But, as the causes of action are pled as torts, Debtor's counterclaim must fail as barred by the far-reaching litigation privilege covered by Cal. Civ. Code §47. Moreover, the court does not see how it can be amended to cure this deficiency so leave to amend is denied.

Grant without leave to amend.

Party Information

Debtor(s):

Christine Carlin

Represented By
Misty A Perry Isaacson

Defendant(s):

Christine Carlin

Represented By
Brian C Carlin

Plaintiff(s):

Jason Frank Law PLC, a

Represented By
Timothy C Aires

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:13-20028 Tara Jakubaitis

Chapter 7

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

**#16.00 Defendant's Motion For Judgment On The Pleadings Pursuant To FRCP 12(C)
(cont'd from 1-28-21)**

Docket 243

Tentative Ruling:

Tentative for 3/25/21:

At the last hearing on this motion, the court acquiesced to the requested additional briefing on the narrow issue of whether Tara intentionally concealed property of her estate, and specifically, whether she did so using corporate entities such as WeCosign, Inc. and/or WeCosign Services, Inc. (and possibly others). Unfortunately, the additional briefing did not bring much clarity. The supplemental briefs read very much like the original briefs in this motion, including some familiar case law, with only a few new details. For example, Trustee is now arguing (more explicitly) that WeCosign Services, Inc. was really nothing more than Tara's alter ego. Trustee alleges that Tara was the sole signatory on WeCosign, Inc. and WeCosign Services, Inc.'s corporate bank accounts, and she allegedly comingled personal and corporate assets in those accounts, and used them as piggy banks without observing any corporate formalities whatsoever. These are arguments that have been advanced several times before and even with Trustee's additional briefing (and accompanying exhibits), the court remains unconvinced by Trustee's arguments. The problem is that the complaint, even after amendments, has never contained an alter ego theory of relief. The problem identified at the last hearing is that in order to have survived the statute of repose found at §727(d)(2) and (e) the debtor, Tara Jakubaitis, would have to have been entitled to possession of "property of the estate" and that most logically means of her estate, not the estate of WeCosign or WeCosign Services or some related corporation.

The only development of consequence is that Trustee now wants leave to amend to add the alter ego theory of liability as he has apparently

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embraced the court's passing observation in the last tentative that an alter ego theory might theoretically have saved the case. There are at least three problems with leave now to amend: (1) This is not a rule 15 motion to amend. It is rather Plaintiff's attempt to come up with more reasons why yet more amendments ought to be allowed to escape the implications of what is before the court as explained last time; (2) This is not a new case, and there are apparently no new facts that were not known years ago. The adversary proceeding is about five years old and the bankruptcy case is over seven years old, with a no asset report filed long ago. WeCosign was itself a debtor whose case was closed some six years ago. The alter ego theory of liability is not some obscure or esoteric legal doctrine. Trustee's dogged persistence and determination throughout the pendency of this case would suggest that if he thought alter ego were a viable theory for including WeCosign Services, Inc.'s assets (or those of any other corporation) within the definition of property of Tara's estate, he would have (should have) pursued that theory years ago; (3) Related to the first reason, at this very late stage in the process, it would seem to unfairly prejudice Tara to allow Trustee to amend his complaint yet again to include a new cause of action available to him long ago. In other words, it appears that Trustee has a laches problem. After all, also on today's calendar is an oft-continued pretrial conference where normally one would expect a trial date to be imminently set. The suggestion that we should now go back to first base on this case to pursue theories not included in the pleadings and reopen discovery at this very late date is not well-received.

All cases must end. Even this one. The court has indulged Trustee and given him many bites at the apple. Even with the benefit of the many doubts in this case, Trustee has not demonstrated a clearly viable cause of action under section 727(d). Therefore, the court sees no reason to depart from the initial tentative posted on this motion.

Grant Rule 12(c) motion.

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This is Defendant and Debtor, Tara Jakubaitis' ("Defendant" or "Debtor") Fed. R. Civ. P. 12(c) motion for judgment on the pleadings. The motion is opposed by the chapter 7 trustee, Richard Marshack ("Trustee" or "Plaintiff").

Plaintiff's first amended complaint was filed on May 13, 2016, and to the court's knowledge, has not been amended since. The first amended complaint sought the following relief:

1. Turnover of estate property, including cash, bank accounts, vehicles (namely a Corvette), and a United States Patent pursuant to 11 U.S.C. §542.

2. Revocation of discharge for alleged intentional failure to report their interest in several assets including bank accounts, vehicles, and a United States Patent pursuant to 11 U.S.C. §727(d)(1).

3. Revocation of discharge pursuant to 11 U.S.C. §727(d)(2) for failure to disclose and turnover the Bui judgment obtained post-petition by Frank Jakubaitis.

This latest motion is brought by Defendant on the grounds that significant events have transpired and coalesced since the last time the court heard a dispositive motion in this case. In particular, they allegedly are: (1) dismissal of Plaintiff's turnover cause of action; (2) this court's granting dismissal of Mr. Jakubaitis from this adversary proceeding due to lack of subject matter jurisdiction; (3) the finding that the Bui judgment was void; (4) the evidence suggesting that neither Debtor nor Frank ever owned a patent; (5) the concession that the Corvette once asserted to be property of the estate, in fact, did not exist; and (6) the Trustee's filing of a no asset report in 2017 that remains operative to this day. Furthermore, although previous attempts from several years ago raising the statute of limitations (or of repose) found in 11 U.S.C. §727(e) as a dispositive issue in a 12(b)(6) context have failed, Defendant asserts that the current record clearly demonstrates the righteousness of her position. It is worth noting that, as far as the court is aware, and Plaintiff appears to confirm in his opposition, the complaint has not been amended since the first amended complaint was filed in May of 2016.

A motion for judgment on the pleadings may be granted only if, taking

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all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). For purposes of a Rule 12(c) motion, the allegations of the non-moving party are accepted as true and construed in the light most favorable to the non-moving party, and the allegations of the moving party are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); *Fleming* at 925. In some ways this motion is more properly brought under Rule 56 as it relies in part on evidence and points extraneous to the pleadings. To the extent that is true the court will construe this as a motion for summary judgment. Using this standard, the points raised below are considered.

1. Timeliness of the Motion

As a preliminary matter, Plaintiff asserts that this motion is untimely because it was filed after the last date to file pre-trial motions as set by this court's scheduling order. According to this court's scheduling order, the last day to file pre-trial motions was December 15, 2019, and this motion was not filed until December 2, 2020. Plaintiff filed an *ex parte* application on December 23, 2020 requesting one of two forms of relief: (1) strike the motion as untimely pursuant to the scheduling order; or (2) continue the hearing on this motion to January 28, 2021. The court granted the latter. Defendant argues that the court's election implies the court's intent to hear the motion on its merits instead of upon a procedural issue. Indeed, the order continuing the hearing on this motion specifically crossed out the portion discussing denial of the motion as untimely. But Defendant reads way too much into this. The court merely chose to consider the issue in the wider context, to include the procedural question. As the court has the inherent power under 11 U.S.C. § 105(a) to manage its own dockets, including issuing new orders that supersede older orders, this motion is considered even if not timely. Mainly the court wants to consider what may be a fundamental problem with this case at its very heart which does not go away merely because the Defendant was late in raising it. Also, Defendant is correct that the once larger array of supposed assets has dwindled significantly which may then justify a closer

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look at the remaining statute of repose question.

**2. Dismissal of Plaintiff's Turnover Cause of Action Under 11
U.S.C. §542**

This court dismissed this cause of action by order issued March 13, 2020. The court did so because of its expressed skepticism that a promissory note on a loan to an entity owned and controlled by Debtor and Frank was properly subject to turnover. The court instead suggested that the proper remedy was a claim for damages. This same order also categorically dismissed Frank Jakubaitis from this adversary proceeding.

3. The Bui Judgment

Plaintiff previously asserted that that the so-called Bui judgment, which Frank Jakubaitis apparently obtained in May of 2015, was fraudulently concealed and is grounds for revocation of discharge under §727(d)(2). However, this issue became largely moot in March of 2017 when the Bui judgment was voided and became worthless. See Defendant's Request for Judicial Notice, Ex. 6. Defendant cites *Sole Energy Co. v. Hodges*, 128 Cal.App.4th 199, 210 (2005) for the proposition that a void judgment cannot be used as the basis of any right whatsoever. Indeed, the *Hodges* court observed, "A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone."

It could be argued that §727(d) is not concerned about the value of a given asset, rather it is concerned with deterring debtors from fraudulently concealing assets of the estate, but that argument is not raised in connection with the Bui judgment. In any case, Defendant argues somewhat convincingly that the Bui judgment, worthless or not, would have part of *Frank's* bankruptcy estate, as it was his judgment, not Defendant's. Additionally, the court is mindful of the purpose of the §727(d) sanction, that is, to motivate debtors to

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be forthright and fulsome in their disclosure on their schedules and to their trustees on pain of losing their discharge. This implies that the assets to be disclosed must have at least some inherent value, as no schedule is so complete as to mention every single worthless piece of junk or hypothetical right or claim which, as it developed in this case, fits the definition of the Bui judgment. Certainly, denial of a discharge based on a wife's failure to disclose her husband's worthless judgment against a third person, which then later goes away as improperly obtained in the first place, rests on a very infirm foundation. Plaintiff's opposition appears to back off on his pursuit of the Bui judgment, which lends additional support to the mootness argument.

4. The Corvette

Plaintiff also alleged that either Defendant, or possibly Frank, was concealing a Corvette from the Trustee. An insurance form concerning a Corvette held in the name of Frank Jakubaitis was used as evidence. However, a transcript of a September 5, 2019 hearing on a motion for default judgment in Frank's adversary proceeding shows that after investigating the insurance lead, Mr. Shirdel, counsel for the plaintiff, Carlos Padilla, III, conceded that Frank never owned the Corvette in question. See Defendant's Request for Judicial Notice, Ex. 7. Mr. Shirdel is also counsel for Trustee in this adversary proceeding.

5. The Patent

The last tangible asset believed by Plaintiff to have been fraudulently concealed was a U.S. Patent. Plaintiff's investigation appears to have been spurred by the existence of a Patent Application. However, the patent application shows that the application was abandoned for failure to respond to an office action in 2007. See Defendant's Request for Judicial Notice, Ex. 5. To the court's knowledge, Plaintiff has not come forward with any additional evidence suggesting the patent ever issued.

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6. Cash Accounts**

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Plaintiff's first amended complaint references concealed cash accounts, but the complaint is extremely light on specifics. Somewhat surprisingly, Plaintiff's opposition to this motion is much more specific in that it includes the names of the various entities allegedly involved, and approximate amounts of monies allegedly received and/or concealed by Defendant. In any case, as Defendant points out, much of the alleged wrongdoing was done through Wecosign, Inc., a corporation owned by the debtors, which filed its own bankruptcy petition in 2014. Thus, it is likely that assets transferred to or through that entity would be property of the estate of Wecosign, Inc., not Defendant's estate. That has large significance in the court's reading of § 727(d), as discussed below.

7. The No Asset Report(s)

Defendant points out that Plaintiff filed a no asset report on March 30, 2017. The report states the trustee has abandoned assets, determined exempt assets, and shows the scheduled claims subject to discharge. In opposing this motion, Plaintiff urges the court to disregard the no asset report as being of only limited relevance. However, although inconvenient for Plaintiff, it does seem particularly relevant that Plaintiff, despite all these allegations of concealed assets, has not withdrawn his nearly 4-year-old no asset report. Certainly, an experienced trustee such as Plaintiff would know that is an option available to him. Thus, the court finds the operative status of the no asset report not only relevant, but rather telling. Maybe even more telling is the fact that Mr. Casey, the trustee in the Wecosign estate also has failed to withdraw his no asset report as well.

8. Plaintiff's Claims Are Likely Time-Barred

Defendant has maintained for some time now that the complaint in this adversary proceeding is untimely as the statute in question, §727 has some rather rigid and unforgiving deadlines.

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Under 11 U.S.C. §727(e):

"The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed."

Here, it appears that nearly all of the allegations in the first amended complaint, including the false oaths, concealment of the Corvette and the U.S. Patent, would fall under §727(d)(1), which covers situations in which a discharge is "obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge[.]" Assets of the estate existing before the petition, but not disclosed, would seemingly fit the §727(d)(1) definition, and from what the court can discern, would encompass all of the above assets with the possible exception of the cash accounts and Bui judgment. As noted above, this section has a 1-year period to bring an action from the time of discharge. Defendant received her discharge on August 11, 2014. The complaint initiating this adversary proceeding was not filed until October 28, 2015, which is well outside the 1-year statute of limitations. It could be argued that there is a case for equitable tolling of the otherwise strict time limits imposed by §727(e). Although many statutes of limitations provide for equitable tolling, courts in the Ninth Circuit and beyond, including secondary sources such as Collier on Bankruptcy have opined that equitable tolling does not apply to §727(d)(1) claims. See *Towers v. Boyd (In re Boyd)*, 243 B.R. 756, 764-65 (N.D. Cal. 2000) ("Case law and treatises almost unanimously favor reading sections 727(d)(1) and (e)(1) as prohibitive of equitable tolling.") These authorities construe §727(e) as a statute of repose, i.e. one providing inalterable relief from action irrespective of future events. See *Apex Wholesale Inc. v. Blanchard (In re Blanchard)*, 241 B.R 461, 464 (Bankr. S.D. Cal. 1999) ("Section 727(e)(2) is a statute of repose and, as such, is not subject to the doctrine of equitable tolling."). The

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court is aware of a concurring opinion in *Weil v. Elliott*, 859 F.3d 812, 815 (9th Cir. 2017) where Judge Christen opined that §727(e)(1) is a statute of limitations, and not a statute of repose. However, as discussed above, whether §727(e) is a statute of limitations or a statute of repose will likely make little difference in this particular case.

However, causes of action brought under §727(d)(2) have more forgiving deadlines under §727(e). Under §727(d)(2), a revocation action may be brought if "the debtor acquired property that is *property of the estate*, or became entitled to acquire property that would be *property of the estate*, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee[.]" (italics added) If applicable this provision would save the present action as the case is not yet closed.

From the face of the complaint, it is not obvious what specific property would fall under §727(d)(2) other than the Bui Judgment, which is named as such in the first amended complaint. However, as noted, the Bui judgment was subsequently voided. After the dismissal of the §542 claims against Defendant, the admission that the Corvette never existed, the evidence that the U.S. Patent was never more than just an abandoned application, and the voided Bui Judgment, what else is left? One could surmise that the bank accounts set up and monies received through the various corporate entities controlled by Defendant and her husband were concealed, but as discussed above, the main entity involved in those allegedly fraudulent transactions, Wecosign, Inc., has its own bankruptcy estate. In any case, it appears from the complaint that most, if not all the money Defendant directly received through those transactions would have been received pre-petition, making it likely to fall under §727(d)(1). Thus, it is not clear what, if anything, is left upon which Plaintiff's revocation action might attach.

That said, the court is unclear about the role of the other related entities such as Wecosign Services, Inc. and PNC National, Inc. But from what the first amended complaint suggests, those companies were operated essentially in the same manner as Wecosign, Inc., which is to say, primarily for the personal benefit of Defendant and Frank. What gives the court some pause here, is the lack of a clear timeline (at least not clear from the first

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amended complaint). It would appear that the alleged misconduct involving these other entities also occurred mostly, if not entirely pre-petition. Plaintiff's opposition does refer to the sum of \$113,000 allegedly transferred from Wecosign Services, Inc. to Defendant both shortly before and shortly after filing her petition. It seems payments making up this sum were made in separate installments. The way this is presented in the opposition uses language that tries to shoehorn it into §727(d)(2). The court is, of course, obliged to look at the alleged facts in the light most favorable to Plaintiff as the non-moving party. However, the court notes that these allegations are not actually in the first amended complaint and it is unknown when Plaintiff became aware of these alleged transactions. One supposes it must have been after the filing of the no asset report in 2017. But then, again, why was the no asset report not withdrawn? In any case, the court is willing to hear argument on this point.

9. Property of Which Estate?

But a more fundamental problem arises. If the timing on the cash account withdrawals is all or at least partly *post-petition*, in an apparent effort to fit within §727(d)(2)'s more flexible statute of repose provided in §727(e)(2), one must ask what is meant by the language italicized above, "property of the estate..." The most likely reading of this language would mean property of the debtor's estate because that is the property the trustee appointed in the debtor's case is authorized to administer. Also, it is possible for a debtor to engage in the proscribed conduct in a separate bankruptcy case, but still obtain a discharge in their own case honestly, and thus, trigger neither subsection (d)(1) nor (d)(2). This view is shared by other courts as well. "It would be a very strained reading of [§727(d)(2)] to conclude that it meant any bankruptcy estate, and not just the debtor's own." *Thompson v. Thompson*, 561 B.R. 581, 596-97 (Bankr. N.D. Ga. 2016) citing *All Points Capital Corp. v. Stancil (In re Stancil)*, 2012 WL 4116505, at *2 (Bankr. E.D.N.C. Sept. 18, 2012) ("Because the debtor did not engage in post-petition conduct in connection with his own individual chapter 7 case prohibited by § 727(d)(2), the court cannot revoke his discharge.").

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But it seems the cash accounts from the Wecosign, Inc. were from another estate, which Mr. Marshack would not in any event have been authorized to administer even if they had been revealed. Plaintiff might have saved his case had he alleged that Wecosign, Inc., and the other related entities, were the alter ego of the debtor(s). To be logically consistent, plaintiff would need to prove that the corporation had no separate existence, such that its monies are in equity the individual's property, and, as a result, that it should be turned over as "property of the estate." That seems a stretch here. For example, could not the alleged behavior amount to corporate malfeasance without equating to an obliteration of the corporation under an alter ego theory? To be clear, in the court's view, the first amended complaint appears to allege facts on the outskirts of an alter ego theory but does not include certain necessary allegations as described above. If such allegations can, in good faith, be made, then one is obliged to wonder, why has the complaint not been amended since 2016? Despite some skepticism, the court is still willing to hear argument on this point.

10. Conclusion

In sum, Plaintiff's opposition raises more questions than it answers, which is to say, is of little help in resolving anything. By contrast, Defendant's motion appears to provide several answers to lingering questions about this case, and unlike the opposition, is supported by documentation in the record of this case or related cases. Where Defendant has submitted extrinsic evidence in support of the motion, the court notes that Plaintiff has either tacitly admitted the authenticity and accuracy of such evidence or has simply failed to challenge the same. In any case, the court is comfortable allowing such evidence to augment the record. In doing so, this motion might be more akin to a motion for summary judgment under Rule 56. See *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996) ("Because the district court has in this case considered evidence outside the pleadings, we treat Brown's motion as one for summary judgment. See Fed. R. Civ. P. 12(c).")

The amount of time this adversary proceeding has gone on is also

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relevant. Defendant received her discharge more than six years ago. The complaint initiating this adversary proceeding was filed more than 5 years ago. The Plaintiff's 'no asset report' remains operative nearly four years after it was filed. The court has indulged Plaintiff's doggedly determined efforts to root out assets that may exist, but at some point, the plug must be pulled, especially when those efforts have turned up more rocks and no gold.

To conclude, the bulk of the causes of action in the first amended complaint appear to be time-barred by the rigidity of §727(e), and it is not obvious that the remaining causes of action, even those that can be charitably gleaned from the opposition to this motion, fit within the more flexible §727(d) (2) and its comparatively generous statute of limitations. Furthermore, Defendant has produced evidence, unchallenged by Plaintiff, that indicates that the key identifiable tangible assets were either worthless or non-existent, and what might have been relevant probably belonged to another estate under the administration of another trustee.

Grant

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

Plaintiff(s):

Richard Marshack

Represented By
Arash Shirdel

Trustee(s):

Richard A Marshack (TR)

Represented By

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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 1-28-21)

Docket 1

Tentative Ruling:

Tentative for 3/25/21:
See #16.

Tentative for 1/28/21:

That both sides' signature appear on a Joint Pre Trial Stipulation and Order is progress. The court would ask that the parties confer so as to decide whether exhibits can be accepted into evidence without dispute, particularly the list of deposits into and payments from the various accounts. If so what will otherwise become an exceedingly tedious trial can be greatly shortened. Of course, both sides would remain free to dispute the significance of the deposits or checks. Depending on resolution of these questions look to schedule trial about mid-summer.

Appearance required.

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

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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 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

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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 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

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can sign.

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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 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

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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.

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

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CONT... Tara Jakubaitis

Chapter 7

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.

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

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

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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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ZoomGov meeting number: 161 356 6584

Password: 318849

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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"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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- NONE LISTED -

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8:21-10123 Marissa Larry

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**EXETER FINANCE LLC
Vs.
DEBTOR**

Docket 8

Tentative Ruling:

Tentative for 3/30/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Marissa Larry

Represented By
Lynda E Jacobs

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:20-10545 Katie Ki Sook Kim

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK TRUST NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 62

Tentative Ruling:

Tentative for 3/30/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:18-14602 Susan D Aronson

Chapter 7

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

WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

Docket 107

Tentative Ruling:

Tentative for 3/30/21:
Allow as prayed. Appearance: optional

Party Information

Debtor(s):

Susan D Aronson

Represented By
Anerio V Altman

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Erin P Moriarty

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8:20-10153 Keri L Doumani

Chapter 7

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

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

MALCOLM CISNEROS, ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CH 7 TRUSTEE

Docket 86

Tentative Ruling:

Tentative for 3/30/21:

Allow as prayed. Appearance: optional

Party Information

Debtor(s):

Keri L Doumani

Represented By
Kevin Tang

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros

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11:00 AM

8:14-17318 Antoine A Johnson and Kelly J Johnson

Chapter 7

#5.00 Motion for Order Disallowing Debtors' Claimed Exemption and Requiring Turnover of Non-Exempt Funds
(cont'd from 2-23-21) Holding Date - Settlement Motion Is Pending

Docket 36

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING MOTION TO APPROVE STIPULATION RE: RESOLUTION OF EXEMPTION ISSUES ENTERED 3-16-21**

Tentative Ruling:

Tentative for 2/23/21:
Status?

Tentative for 1/12/21:
The court understood that the trustee was awaiting passage of the claims bar in order to determine how much of the claimed exemption in the litigation proceeds would be needed. The court was hoping for an update but has seen nothing.

Status?

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:

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CONT...

Antoine A Johnson and Kelly J Johnson

Chapter 7

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.

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

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CONT... Antoine A Johnson and Kelly J Johnson

Chapter 7

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 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

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CONT... Antoine A Johnson and Kelly J Johnson

Chapter 7

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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8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

**#6.00 Secured Creditor Poppy Bank's Motion For Order Vacating Order Granting
Trustee's Motion to Approve Compromise of Controversy
(OST Signed 3-24-21)**

Docket 175

Tentative Ruling:

Tentative for 3/30/21:
Granted. Per OST, opposition due at hearing.

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

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ZoomGov meeting number: 161 629 7986

Password: 626055

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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Tentative Ruling:

- NONE LISTED -

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10:00 AM

8:18-10486 Ron S Arad

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 403

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT
DEBTOR'S CASE UNDER 11 U.S.C. SECTION 1112(b) FILED 3-2-2021 -
(DOCKET NO. [418])**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Movant(s):

United States Trustee (SA)

Represented By
Michael J Hauser
Frank Cadigan

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8:18-12449 Gregory Anton Wahl

Chapter 11

#2.00 U.S. Trustee's Motion to Dismiss or Convert Reorganized Debtors Case Under 11 U.S.C. §1112(B) For Failure To Pay Post-Confirmation Quarterly Fees

Docket 364

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT
DEBTOR'S CASE UNDER 11 U.S.C. SECTION 1112(B) FILED 3-03-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory Anton Wahl

Represented By
Christopher J Langley
Donald W Reid
Barry E Cohen

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8:18-14436 Juan Jesus Rojas de Borbon

Chapter 11

#3.00 U.S. Trustee's Motion To Dismiss Or Convert Reorganized Debtors Case Under 11 U.S.C. §1112(B) For Failure To Pay Post-Confirmation Quarterly Fees

Docket 114

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF U.S. TRUSTEE'S MOTION TO DISMISS OR CONVERT
DEBTOR'S CASE UNDER 11 U.S.C. SECTION 1112(B) FILED 3-03-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Jesus Rojas de Borbon

Represented By
Michael Jones
Sara Tidd

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8:16-11588 Long-Dei Liu

Chapter 11

**#4.00 POST- CONFIRMATION STATUS CONFERENCE Re: Chapter 11 Voluntary
Petition Individual**

Docket 1

Tentative Ruling:

Tentative for 3/31/21:
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

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10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

**#5.00 STATUS CONFERENCE On Fee Award Issues Remanded By District Court
(cont'd from 10-14-20)**

Docket 0

Tentative Ruling:

Tentative for 3/31/21:
Continued to June 2, 2021 @10:00AM

Appearance: optional

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

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8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#6.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Plan
(set from 4-08-20 discl stmt hrg)
(cont'd from 10-14-20)
(set from confirmation hrg held on 12-09-20)**

Docket 66

Tentative Ruling:

Tentative for 3/31/21:
Continue to coincide with hearing on final decree April 21, 2021 @ 10:00AM.

Appearance: optional

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 &

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CONT... Rosemaria Geraldine Altieri

Chapter 11

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. 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

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CONT... **Rosemaria Geraldine Altieri**

Chapter 11

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, 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

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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 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*.

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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 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

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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

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.

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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.

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,

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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, 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.

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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 '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

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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 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.

Tentative for 4/8/20:

The purpose of a disclosure statement is "to give all creditors a source

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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.

Party Information

Debtor(s):

Rosemaria Geraldine Altieri

Represented By

Misty A Perry Isaacson

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8:20-12963 World of Dance Tour Inc.

Chapter 11

#7.00 Application To Employ Schenk Group, Inc. as Business Appraiser

Docket 103

Tentative Ruling:

Tentative for 3/31/21:

“Valuation”, more an art than a science, will be central to any attempt to confirm a plan in this case, particularly as concerns the best interest of creditors test. Consequently, both the Trustee and the debtor should have an opportunity to present their respective views.

Grant.

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.

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#8.00 World Of Dance Tour Inc.s Application to Employ Metis Partners Inc. As Intellectual Property Valuation Advisors Pursuant To 11 U.Sc. § 327(A)

Docket 110

Tentative Ruling:

Tentative for 3/31/21:
Grant. (see #7)

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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8:21-10256 BioXXel, LLC

Chapter 11

#9.00 Debtor And Debtor in Possession's Motion for Order Authorizing Debtor to Enter Into Post-Petition Commercial Leases Pursuant To 11 USC Section 363(C) Or In The Alternate Section 363(B)(1)

Docket 54

Tentative Ruling:

Tentative for 3/31/21:
Grant.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood
Laila Masud
Matthew Grimshaw

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8:21-10017 DGWB Ventures, LLC

Chapter 11

#10.00 Final Hearing Re: Motion For Entry Of An Order Authorizing Debtor To Use Cash Collateral On An Interim Basis Pending A Final Hearing
**(OST Signed 1-20-21)
(cont'd from 1-27-21)**

Docket 12

***** VACATED *** REASON: CONTINUED TO 4-07-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE USE OF
CASH COLLATERAL AND TO CONTINUE FINAL HEARING ON USE
OF CASH COLLATERAL ENTERED 3-23-21**

Tentative Ruling:

Tentative for 1/27/21:
Opposition, if any, due at hearing.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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8:20-10143 Bridgemark Corporation

Chapter 11

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#11.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers
(cont'd from 2-24-21 per stipulation to further cont hrg on initial s/c entered 2-23-21)**

Docket 1

Tentative Ruling:

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 2/10/21:
Continue as requested assuming some update on settlement efforts at hearing.

Appearance: required

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray

Defendant(s):

Placentia Development Company

Pro Se

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Plaintiff(s):

Bridgemark Corporation

Represented By
Erin E Gray
James KT Hunter
William N Lobel

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8:20-10143 Bridgemark Corporation

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**#12.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 2-24-21 per order apprvg stip. to cont. hrg entered 2-23-21)**

Docket 1

Tentative Ruling:

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

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

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**#13.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 2-24-21 per order apprvg stip. to cont. hrg entered 2-23-21)**

Docket 54

Tentative Ruling:

Tentative for 3/31/21:
See #16.

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:

See #8 and 9.

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

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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 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.

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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 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

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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 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:

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Chapter 11

- "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 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

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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 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

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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 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

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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 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

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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 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

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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 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

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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 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

**#14.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 2-24-21 per order apprvg stip. to cont hrg entered 2-23-21)**

**PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR**

Docket 53

Tentative Ruling:

Tentative for 3/31/21:
See #16.

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8 and 9. Appearance: required

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.

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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

#15.00 Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
(con't from 2-24-21 per order apprvg stip. to cont. hrg entered 2-23-21)

Docket 93

Tentative Ruling:

Tentative for 3/31/21:
See #16.

Tentative for 2/24/21:
Should this be continued as in #s 6-9?

Tentative for 2/10/21:
See #8 and 9.

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

#16.00 Motion Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 365 and Fed. R. Bankr. P. 9019 for Entry of Order (I) Approving Settlement Agreement Between the Debtor, Robert J. Hall, and Placentia Development Company and Related Agreements, (II) Approving Sale of Substantially All Assets of the Debtor Free and Clear of Liens, (III) Approving Assumption and/or Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Modifying Order Authorizing Employment of Numeric Solutions LLC, and (V) Granting Related Relief

Docket 392

Tentative Ruling:

Tentative for 3/31/21:

Grant. Kraemer's request for more time (not an opposition) was reviewed (although filed late) but will be denied. First, it is not clear that Kraemer enjoys standing as his position seems primarily that of the owner of mineral rights leased to debtor, and the court does not see how this motion, even if granted, would affect rights accruing to that position. The sale seeks transfer of leases but does not purport to affect or amend terms of the leases, or at least that is the reported effect. If cessation of pumping as discussed is a breach of lease, then the leaseholders have their contractual rights, which might or might not lead to monetary damages and might or might not allow a forfeiture of the lease rights held by the operator. But absent a sale, that event looks likely to come to pass in any event as the continuation of this case is not viable in Chapter 11. Kraemer might have a minor amount of royalties owed but that is likely (perhaps more likely) to be paid from proceeds of sale along with all other allowed creditors, or so the papers promise. Also, the argument that more time is needed to evaluate "what to do" sounds like a potential buyer speaking, not the passive owner of royalty streams. Reportedly, Kraemer has already looked at being a buyer months ago but decided to pass. He and colleagues might even decide an overbid is now their best maneuver, but this appears to be quite aside from the concerns of allowed creditors who are already promised full payment, and is very late. And, of course, Kraemer promises nothing and puts none of his own capital at risk. The court will not risk the possible catastrophic disruption complained of by debtor of a known deal that reportedly pays allowed claims in full in favor of something as tentative and inchoate as Kraemer's concerns.

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Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray
Matthew J Pero

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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/1600488323>

ZoomGov meeting number: 160 048 8323

Password: 617800

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).

Docket 0

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- NONE LISTED -

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8:18-10969 Luminance Recovery Center, LLC

Chapter 7

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

- #1.00 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 1-28-21 per order approving stip. to extend dates in modified scheduling order entered 12-18-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-03-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO EXTEND DATES IN MODIFIED SCHEDULING ORDER ENTERED 3-19-21**

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

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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

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David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw

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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 PRE-TRIAL CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(set from 5-13-20 s/c hrg held)
(cont'd from 2-25-21)**

Docket 1

Tentative Ruling:

Tentative for 4/1/21:
Continue to April 29, 2021 @ 2:00 p.m. to coincide with summary judgment motion.

Tentative for 2/25/21:
What is status of stipulation to consolidate adversary proceedings? Continue SC about 30 days for that to occur.

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.

Tentative for 2/27/20:
Deadline for completing discovery: August 1, 2020
Last date for filing pre-trial motions: August 24, 2020

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CONT... Igor Shabanets

Chapter 11

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

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8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01066 Remares Global LLC v. Marshack et al

#3.00 PRE-TRIAL 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)
(cont'd from 1-14-21)**

Docket 5

Tentative Ruling:

Tentative for 4/1/21:
Status?

Tentative for 1/14/21:
How long of a continuance is needed to document the settlement and provide any 9019 notice (if required)?

Appearance: required

Tentative for 7/23/20:
Same schedule as #9.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Richard A Marshack

Pro Se

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CONT... Igor Shabanets Chapter 7

Igor Shabanets Pro Se

IOS PROPERTIES, LLC Pro Se

Plaintiff(s):

Remares Global LLC Represented By
Alan W Forsley

Trustee(s):

Richard A Marshack (TR) Represented By
D Edward Hays

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8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01089 Marshack v. Supreme Oil Company

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims
(set from s/c hrg held on 8-06-20)
(cont'd from 1-28-21 per order granting stip. to cont. the pre-trial conf entered 1-14-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-03-21 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUE THE PRE-
TRIAL CONFERENCE ENTERED 3-08-21**

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

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

Thursday, April 1, 2021

Hearing Room 5B

10:00 AM

CONT... i.i. Fuels, Inc.

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Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
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8:18-10582 David R. Garcia

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

#5.00 Defendant's Motion for Summary Judgment

Docket 81

Tentative Ruling:

Tentative for 4/1/21:

This is Defendant/Debtor, David R. Garcia's ("Defendant"), Rule 56 motion for summary judgment against Plaintiff, Mandana Jafarinejad ("Plaintiff"). Defendant seeks summary judgment on both of Plaintiff's claims of non-dischargeability in this adversary proceeding, which claims are: (1) for the \$111,459.26 State Court judgment against Hans-Drake International, a corporation partly owned by Debtor, for unpaid wages, accrued interest, liquidated damages, and statutory penalties ("State Court Judgment"); and (2) a promissory note consisting of a loan of \$60,000 from Plaintiff to Debtor ("Note"). The argument is that both claims are time-barred under statutes of limitation.

1. Background

The following facts are not contested in any material part.

On August 23, 2012, Plaintiff entered into a written employment agreement to fulfil the position of Intellectual Property-Patent Attorney for Hans-Drake with an annual salary of \$100,000, plus quarterly nondiscretionary bonuses of \$12,500 beginning in the second quarter of employment. Plaintiff was employed as in-house counsel for Hans-Drake from September 4, 2012 to July 28, 2014. Plaintiff alleges that Defendant lived a lavish lifestyle during Plaintiff's employment, owning several luxury vehicles including a Lamborghini, Bentley, Mercedes, Ferrari and Range Rover, and often described his yacht and vacations to places such as Fiji.

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On December 17, 2012, Plaintiff agreed to make Defendant a personal loan and executed a promissory note for \$60,000, plus interest of 1%, to be paid in full on or before February 15, 2013, with a \$15/day penalty for late payment.

Defendant failed to pay the loan when it came due. From around September 3, 2013 through Plaintiff's termination from Hans-Drake on July 28, 2014, Plaintiff was not paid some of her wages at all and was otherwise paid reduced wages. Defendant requested that Plaintiff not negotiate the checks that were issued against insufficient funds; made several promises to reimburse her; and Defendant offered Plaintiff stock options in lieu of the unpaid wages, which Plaintiff refused. Plaintiff continued to work for Hans-Drake during this time, until her termination.

In or about January 2014, Defendant approached Plaintiff to co-sign a business loan Defendant was seeking from Quick Bridge and promised the loan would be used in part to repay her. Plaintiff agreed to co-sign the January 2014 loan to Hans-Drake from Quick Bridge, as well as a second Quick Bridge Loan made in April 2014, thereby personally guaranteeing the loans.

On the morning of July 28, 2014, Plaintiff was terminated from Hans-Drake by Michael Lyles, a minority owner of Hans-Drake.

On August 4, 2014, Plaintiff filed a complaint against Hans-Drake with the State Labor Commissioner pertaining to her unpaid wages. After a hearing on February 28, 2015, an award was granted by the Labor Commissioner and on April 30, 2015, a Default Judgment was entered against Hans-Drake in the Orange County Superior Court in the amount of \$111,459.26. Plaintiff never received any payment toward the amount owed on the judgment.

On June 13, 2017, Plaintiff filed a Breach of Contract claim against Defendant, Hans-Drake, and Musclemwerks, Inc. in Orange County Superior Court for failure to pay the \$60,000 loan. In that lawsuit against Defendant and his entities, Plaintiff alleged alter ego liability. However, Plaintiff claims that she did not allege fraud at that time because she did not discover the

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necessary evidence for alleging Defendant's lack of intent to repay the loan until discovery was ongoing in the present bankruptcy action.

On December 19, 2017, the Superior Court in the pending breach of contract case granted Plaintiff Right to Attach Orders, referring to the prior order from the State Court judgment against Hans-Drake, for no other purpose than to secure Plaintiff's claim for the \$62,831.49 unpaid balance on the promissory note.

On February 21, 2018, Defendant filed a voluntary chapter 7 petition.

On June 11, 2018, Plaintiff filed this adversary proceeding against Defendant requesting that the court find the State Court Judgment for her unpaid wages a non-dischargeable debt of Debtor under 11 U.S.C. 523(a)(6) [willful and malicious injury], and the balance of the unpaid \$60,000 promissory note a non-dischargeable debt owed by Debtor under 11 U.S.C. 523(a)(2)(A) [actual fraud].

2. Summary Judgment Standards

LBR 7056-1 makes Fed. R. Civ. P. 56 applicable in bankruptcy proceedings. Courts may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "As to materiality, substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.*

The moving party always bears the initial burden of proof of demonstrating to the court the absence of a material fact. *Celotex* at 323. Furthermore, "the burden on the moving party may be discharged by

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'showing'... that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. The evidence presented "must be viewed in the light most favorable to the opposing party." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). Accordingly, if the moving party "does not discharge that burden then the [moving party] is not entitled to judgment." *Adickes* at 161. If the moving party meets their burden, then "the nonmoving party must come forward 'with specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

3. Is Plaintiff's First Claim for Relief Subject to Summary Judgment?

Summary Judgment will be granted as to Plaintiff's first claim regarding the State Court Judgment for unpaid wages.

"[T]here are two distinct issues to consider in the dischargeability analysis: first, the establishment of the debt itself, which is subject to the applicable state statute of limitations; and, second, a determination as to the nature of that debt, an issue within the exclusive jurisdiction of the bankruptcy court and thus governed by Bankruptcy Rule 4007. A debt barred by the applicable state statute of limitations will not support a dischargeability action." *In re Moore*, No. 12-10802-A-7, 2014 WL 3570600, at *5 (Bankr. E.D. Cal. July 18, 2014) (citing *Banks v. Gill Distributions Ctrs., Inc.*, 263 F.3d 862, 868 (9th Cir.2001)).

Here, Defendant's argument is essentially that he is not personally liable for this debt and Plaintiff is now time-barred under CCP § 338(a) from making a claim as to his liability. Thus, any determination as to whether the character of the obligation is dischargeable or not is moot, because Plaintiff is barred from establishing that Defendant is personally liable for the debt.

a. The State Court Judgment and alter ego

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In her Complaint, under Plaintiff's first claim for relief she alleges in part that, "[a]ll or part of the debt owed to Plaintiff, as evidenced by the State Court Judgment entered against the Debtor, is non-dischargeable . . ." (AP Complaint, 3:13–14). Plaintiff incorrectly states that the judgment was entered against Defendant, when it is undisputed that the State Court Judgment for Plaintiff's unpaid wages was entered against Hans-Drake only, the sole defendant in the case. (See Opposition – Plaintiff's Statement, Exhibit 13). Furthermore, the Labor Commissioner's Order and State Court Judgment were entered in default because no answer or defense was ever put forth by Hans-Drake and no appearance was made by Hans-Drake. (Motion, 2:9–13). While Plaintiff was seemingly relying on the State Court Judgment to establish the debt against Defendant in her first claim for relief, she is now raising the alter-ego theory to establish the debt in her Opposition to this Motion. (Opposition, 14–15.)

At times, courts have allowed injured plaintiffs to amend a judgment under CCP §187 by adding a judgment debtor when the plaintiff can prove the alter ego theory. However, it has been well established that, when a default judgment has been entered, courts will not add a new judgment debtor based on the alter ego theory when to do so violates due process.

In default judgments, the application of the alter ego doctrine is subject to a limitation arising from considerations of due process. Under Code of Civil Procedure §187, "to amend a judgment to add a defendant, thereby imposing liability on the new defendant without trial, requires both (1) that the new party be the alter ego of the old party and (2) that the new party ... controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns. The due process considerations are in addition to, not in lieu of, the threshold alter ego issues." *Triplett v. Farmers Ins. Exchange*, 24 Cal.App.4th 1415, 1421(1994).

The due process-related requirement was first recognized by California's Supreme Court in *Motores de Mexicali v. Superior Court*, 51 Cal.2d 172 (1958). There, three individuals formed a corporation that engaged in the sale of used cars. (*Id.* at 173–174). When the plaintiff sued the corporation for failure to pay some loans, neither the corporation nor the

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individuals operating it appeared in the action, and a default judgment was entered against the corporation. When the plaintiff sought to modify the default judgment to include the three individuals as judgment debtors on an alter ego theory, the trial court declined to do so. *Id.* at 176. Affirming that ruling, the court concluded that the Fourteenth Amendment of the United States Constitution precluded the modification, stating: "That constitutional provision guarantees that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his defenses. [Citations.] To summarily add [the three individuals] to the judgment heretofore running only against [the corporation] without allowing them to litigate any questions beyond their relation to the allegedly alter ego corporation would patently violate this constitutional safeguard.... They were under no duty to appear and defend personally in that action, since no claim had been made against them personally." *Motores*, at 176; See also *Wolf Metals Inc. v. Rand Pacific Sales Inc.*, 4 Cal. App. 5th 698, 703 (Cal. 2d Dist. 2016); *NEC Electronics Inc. v. Hurt*, 208 Cal.App.3d 772, 775–781 (1989).

Here, because the State Court Judgment was a default judgment against Hans-Drake, Plaintiff cannot simply add Defendant as a judgment debtor under CCP §187 now to establish the debt against Defendant as if he were Hans-Drake and no claim for relief in this action as currently pled can be read that way. Moreover, this court is in no position to amend the Superior Court's judgment at this late date some six years later; so, to establish direct liability against Defendant she would have to amend her complaint and perhaps also overcome statutes of limitation.

b. Statute of Limitations under CCP §§338 or 337

Since Plaintiff cannot establish the debt against Defendant through the State Court Judgment, Plaintiff must show that Defendant is personally liable for her unpaid wages based on a new cause of action against Defendant. However, Defendant argues that Plaintiff is barred from doing so under the three-year statute of limitations set forth in CCP §338(a), which applies to actions upon a liability created by statute.

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In a new cause of action against Defendant to establish the debt, Plaintiff would again have to assert a claim for her unpaid wages grounded by a plausible theory such as the appropriate section of the CA Labor Code (as in the State Court Judgment), or another theory such as breach of contract. However, a claim based on statute such as the Labor Code is restricted by the three-year statute of limitation under CCP §338(a), and a claim based on breach of contract is restricted by the four-year statute of limitations set forth in CCP §337(a). For unpaid wages, the statute of limitations generally begins running at the time of the last breach, and thus the statute of limitations would have started at the time of Plaintiff's termination, on July 28, 2014. Therefore, the statute of limitations for Plaintiff to bring her claim on this theory against a new defendant has long expired, so it seems that there are no actionable unpaid wages claims pertaining directly to Defendant as a personal liability of debtor. See e.g. *Barth v. Roberts (In re Roberts)*, Nos. 15-22434-B-7, 15-2115, 2017 Bankr. LEXIS 1790, at *13-14 (Bankr. E.D. Cal. June 26, 2017).

c. Plaintiff's Opposition

In Plaintiff's opposition she argues that the "First Claim for Relief is based upon a Judgment entered by the California Labor Commissioner on April 15, 2015 for the willful failure to pay Ms. Jafarinejad wages she earned by working for Defendant Garcia's company, Hans Drake. (AMF No. 36). Judgments under California state law are enforceable for ten (10) years before they need to be renewed. Cal. Code of Civil Procedure § 683.120. Thus, she argues, there is no time bar under state law for pursuing the Labor Commissioner Judgment." (Opposition, 14:8–13). But enforceability of the default judgment based on the Labor Commissioner's order is not really the issue. The real issue is whether she can now, six years later, amend that judgment to assert liability as against the Debtor. She goes on to raise the alter-ego theory but does not provide any rebuttal to Defendant's previously discussed argument nor does she explain how these new allegations which would have to be proven in order to obtain an alter ego judgment are not themselves time barred.

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Plaintiff also relies on *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202 (9th Cir. 2001) in both the First Claim for Relief and the Opposition, as an example that supports her claim. However, while the facts are superficially similar, one glaringly distinguishable fact is that the Plaintiff in *Jercich* filed the state court action *and received a judgment against* Jercich, the actual debtor in the subsequent bankruptcy—not the corporation as in this case. *Jercich*, at 1204. Thus, this case does not help Plaintiff in establishing Defendant's personal liability for her unpaid wages.

One other response worth discussing, although not proposed by the Plaintiff's opposition, is whether Defendant waived his right to the defense of statute of limitations by not explicitly raising it in his answer. "It is well established, however, that failure to raise an affirmative defense by responsive pleading does not always result in waiver." *Moore, Owen, Thomas & Co. v. Coffey*, 992 F.2d 1439, 1445 (6th Cir. 1993).

Our circuit liberalized the requirement that affirmative defenses be raised in a defendant's initial pleading in *Healy Tibbitts Construction Co. v. Insurance Co. of North America*, 679 F.2d 803 (9th Cir.1982). There the defendant insurance company was allowed to raise the affirmative defense that the insurance policy exclusion clause precluded recovery by way of a motion for summary judgment despite the fact that this defense was not among the seven affirmative defenses that the defendant raised in its answer to the plaintiff's initial complaint. The *Healy Tibbitts'* holding that, absent prejudice to the plaintiff, a defendant may raise an affirmative defense in a motion for summary judgment for the first time is controlling here. No prejudice has been claimed by appellants nor can the court discern any. See *Rivera v. Anaya*, 726 F.2d 564, 566 (9th Cir. 1984); affirmed by *Camarillo v. McCarthy*, 998 F.2d 638, 639 (9th Cir. 1993).

Plaintiff did not raise this opposition to Defendant's Motion, and thus has not claimed any prejudice pertaining to Defendant's use of the defense now. Furthermore, Plaintiff was given notice and an opportunity to respond to Defendant's Motion, therefore it is unlikely that prejudice to the Plaintiff would be found. Thus, Defendant's failure to explicitly raise the statute of limitations defense in his answer does not bar him from asserting it in this motion.

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d. *Hennessey's Tavern, Inc. v. American Air Filter* and limitations regarding alter ego liability

But there *may* still be a path for Plaintiff. In *Hennessey's Tavern Inc. v. American Air Filter Co., Inc.*, 204 Cal. App. 3d 1351 (1988), the court held that an action may still be maintained against an alter ego defendant after the statute of limitations on the underlying claim had expired. *Id.* at 1359. The *Hennessey's* court reasoned that the alter ego defendant has no separate primary liability to the plaintiff but is in the eyes of equity identical to that of the already-named corporation. *Id.* at 1358. Rather, the claim is only to procedurally disregard the corporate entity to hold the alter ego liable for the already established obligation. See also *Most Worshipful sons of Light etc. v. Sons of Light, etc.*, 160 Cal App. 2d 560, 566 (1958) citing *Taylor v. Newton*, 117 Cal. App. 2d 752, 757 (1953). But the *Hennessey's* court at 1358 also with caution cited *Motores, supra*, suggesting this cannot be done by simple post-trial motion unless the case was tried (not by mere default). As a corollary, it was also made clear in *Dow Jones, Inc. v Avenel*, 151 Cal. App. 3d 144 (1984) that the alleged alter ego defendant must be given a due process opportunity to meet the factual allegations underlying an equitable conclusion of alter ego, even if not at a full blown trial. *Id.* at 150.

Furthermore, the appellate court in *NEC Elecs., Inc. v. Hurt*, 208 Cal. App. 3d at 780 decided not to extend the ruling in *Dow Jones, Inc.* when the court reversed the trial court's amendment that named Hurt as an additional judgment debtor to a previous judgment. Because the previous trial court judgment was obtained by default, similar to the instant case, the court in *NEC* found that *Motores* controlled instead:

In *Dow Jones Co., Farenbaugh* and *Mirabito*, the underlying action was contested and therefore the alter ego's interests were effectively represented by the defense presented by the corporate defendant. By contrast, in *Motores*, where the judgment was obtained by default, the court stressed that the alter ego's interests were not represented in the underlying action and also emphasized that adding them as additional judgment debtors would violate due process. We believe

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that *Motores* should control the result here. Ph did not appear at trial and did not make any attempt to defend the NEC lawsuit. As a consequence, we do not believe that Hurt's interests were represented in the underlying action.

NEC Elecs. Inc. v. Hurt, 208 Cal. App. 3d at 780.

4. Conclusion on the First Claim of Relief

So, where does this leave us? On the pleadings as they now stand Defendant's argument based on the statute of limitations as to the First Claim for Relief is well taken. But there might still be a way to revive the claim based upon the Labor Commissioner's order if the issue of alter ego can be properly raised. This court is not prepared to opine as to whether that issue must be raised by reopening the Superior court action, or by some new process in equity. However, a due process opportunity of Defendant to meet the factual allegations supporting the theory must be afforded.

5. Is Plaintiff's Second Claim for Relief Subject to Summary Judgment?

Defendant's only claim for summary judgment as to the second claim is that Plaintiff is time-barred under the three-year statute of limitations CCP § 338(d), and thus the pending state court action filed on 06/13/2017 establishing the debt was untimely. Summary Judgment will be denied as to Plaintiff's second claim regarding the \$60,000 unpaid promissory note, because this was a personal loan between Plaintiff and Defendant on which Plaintiff filed a state court action against Defendant personally (along with Hans-Drake and Musciewerks), and a material issue of fact exists as to when Plaintiff first suspected fraud; thereby creating a triable question of fact as to whether the Delayed Discovery Rule applies and when the statute of limitations for fraud under CCP §338(d) should have begun running.

CCP §338(d) provides that "[t]he cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the

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facts constituting the fraud or mistake." To better explain this language Defendant cites *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 803 (2005), which states, "under the delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an injury and some wrongful cause, unless the plaintiff pleads and proves that a reasonable investigation at that time would not have revealed a factual basis for that particular cause of action. In that case, the statute of limitations for that cause of action will be tolled until such time as a reasonable investigation would have revealed its factual basis." In his Motion, Defendant argues that "the delayed discovery rule does not apply because Plaintiff had reason to suspect an injury and some wrongful cause not later than the breach of contract on February 15, 2013," the date that the loan became due and Defendant failed to pay it. He also points out in his Reply that Plaintiff testified to seeing large amounts of money coming into the business while employed at Hans-Drake, while also observing Defendant's luxurious lifestyle, and thus she had ample reason to suspect that Defendant had committed fraud. (Reply, 6–8). But this is merely inferential evidence to support a theory, however, and does not negate the possibility that a jury could well find otherwise, which is all that is needed to defeat the motion.

To defeat the summary judgment motion, Plaintiff need only show that there is a triable issue, as previously discussed in the Summary Judgment Standards. As Plaintiff argues in her Opposition, "[i]n evaluating a summary judgment motion, a court views all facts and draws all inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986). The nonmoving party may rely on circumstantial and inferential evidence to defeat motion for summary judgment. *Cox v. Kentucky Dep't of Transp.*, 53 F.3d 146, 151 (6th Cir. 1995). "A [party's] sworn statements cannot be disbelieved at the summary judgment stage simply because his statements are in his interest and in conflict with other evidence." *United States v. Arango*, 670 F.3d 988, 994 (9th Cir. 2012)."

In her Opposition, Plaintiff states other reasons for why Defendant may not have been able to pay back the loan, implying that she did not assume fraud immediately after the loan became due nor necessarily should she have. "Cashflow troubles, pandemics, and third-party intervention are

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amongst many reasons for contracts to not be performed. Therefore, it was not unreasonable, at the time of the initial failure to pay, for Ms. Jafarinejad to not assume that Defendant Garcia's failure to pay was due to lack of intent necessary for fraud." (Opposition, 27–28). Further inferential evidence to create a triable issue is the fact that Plaintiff co-signed and personally guaranteed two business loans for Defendant in 2014—over a year *after* the \$60,000 loan became due— which arguably demonstrates that Plaintiff still, surprisingly perhaps, had some level of trust in Defendant and believed that he would pay her back as promised. Additionally, Plaintiff did not allege fraud in the pending state court action against Defendant pertaining to the \$60,000 loan, filed on June 13, 2017, from which one might infer that Plaintiff did not have good reason to suspect fraud at that time. Thus, at very least there is a triable issue as to when the statute of limitations for fraud started to run, thereby defeating Defendant's summary judgment claim.

Moreover, Defendant may be applying the incorrect statute of limitations by assuming that CCP §338(d) is the applicable statute, and a triable issue may exist as to which statute of limitations applies here. See *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868–69 (9th Cir. 2001) ("Although the state statute of limitation for fraud had run by the time Gill filed the timely state court contract action, Gill is not prevented from raising these issues in the dischargeability proceeding. Gill did not assert a fraud claim in state court, but certain non-fraud-based state claims may form the basis for a finding of nondischargeability under § 523(a)(2).").

In our case, Plaintiff filed the pending state court action under California Commercial Code § 3118(a), which provides that "an action to enforce the obligation of a party to pay a note payable at a definite time shall be commenced within six years after the due date or dates stated in the note . . ." Therefore, under *Banks*, the applicable statute of limitations may be six years, which would completely negate Defendant's argument that the pending state court action was untimely, at least as to §523(a)(2)(A) theories not barred under CCP§338(d).

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6. Conclusion

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Defendant's claim of summary judgment as to Plaintiff's first claim of relief will be granted for the claim as it is currently pled, because Plaintiff is barred from establishing that Defendant is personally liable for the debt directly by statutes of limitation. However, this will be without prejudice to either a Rule 15 motion to amend, or perhaps leave to reopen the matter in Superior Court based on the Labor Commissioner's order to essentially adopt the already established liability of Hans-Drake as his own. Defendant's claim of summary judgment as to Plaintiff's second claim of relief will be denied because triable issues exist regarding which statute of limitations applies and when such statute of limitation began running.

Grant in part (First Claim) and deny in part (Second Claim) but without prejudice to a Rule 15 amendment motion to establish liability on First Claim through the established liability of Hans-Drake.

Party Information

Debtor(s):

David R. Garcia

Represented By
Thomas J Tedesco

Defendant(s):

David R. Garcia

Represented By
Donald W Reid

Plaintiff(s):

Mandana Jafarinejad

Represented By
Melissa Fulgencio

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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- 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.
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- NONE LISTED -

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8:19-11521 Jee Hyuk Shin

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**WICKHAM G. SMITH
Vs.
DEBTOR**

Docket 49

Tentative Ruling:

Tentative for 4/6/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Jee Hyuk Shin

Pro Se

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, April 6, 2021

Hearing Room 5B

10:30 AM

8:20-11067 Thomas Casey Beales

Chapter 13

**#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 3-02-21)**

**TOYOTA MOTOR CREDIT CORPORATION
Vs
DEBTOR**

Docket 45

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 3-26-21**

Tentative Ruling:

Tentative for 3/2/21:
Grant absent current post petition or APO.

Appearance: required.

Party Information

Debtor(s):

Thomas Casey Beales

Represented By
Anthony B Vigil

Movant(s):

TOYOTA MOTOR CREDIT

Represented By
Austin P Nagel

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, April 6, 2021

Hearing Room 5B

10:30 AM

8:17-13050 David Jose Martinez

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-02-21)

SELECT PORTFOLIO SERVICING, INC.
Vs
DEBTOR

Docket 45

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOTION FILED 3-08-21**

Tentative Ruling:

Tentative for 3/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

David Jose Martinez

Represented By
Ruben Fuentes

Movant(s):

Select Portfolio Servicing Inc., 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, April 6, 2021

Hearing Room 5B

10:30 AM

8:18-13799 Margoth Angelica Esquivel

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 3-02-21)**

**WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR**

Docket 46

Tentative Ruling:

Tentative for 4/6/21:
Grant. Appearance: optional

Tentative for 3/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Margoth Angelica Esquivel

Represented By
LeRoy Roberson

Movant(s):

Wilmington Savings Fund Society,

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, April 6, 2021

Hearing Room 5B

11:00 AM

8:20-12856 1875 N Palm Canyon Partners II, LLC

Chapter 11

**#5.00 STATUS CONFERENCE RE: Chapter 7 Voluntary Petition Non-Individual. LLC
(cont'd from 2-03-21)**

Docket 1

Tentative Ruling:

Tentative for 4/6/21:

The court thanks Trustee for her report. It also concurs that speed is indicated as time is not on the side of the estate; and whether there is any prospect for unsecured creditors (the prerequisite for administration) is in grave doubt.

Tentative for 2/3/21:

Still no status report? Appearance: required

Tentative for 12/2/20:

Why no status report?

Party Information

Debtor(s):

1875 N Palm Canyon Partners II,

Represented By
Edmond Richard McGuire

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Hearing Room 5B

11:00 AM

8:20-11560 Joe Anthony Santa Maria

Chapter 7

#6.00 United States Of America's Motion To Convert Case From Chapter 7 To Chapter 11 Pursuant to 11 U.S.C. § 706(b)

Docket 43

Tentative Ruling:

Tentative for 4/6/21:

The IRS moves to convert debtor, Joe Anthony Santa Maria's ("Debtor") case from chapter 7 to chapter 11 pursuant to 11 U.S.C. §706(b). Debtor opposes the motion.

Debtor opposes the motion on grounds that: (1) The motion misstates issues of fact such as the contents of Debtor's Schedule I and J; (2) The IRS's motion is really an improper end-run around 11 U.S.C. §707(b); (3) The IRS's motion misstates the balancing of interests; and (4) that the motion, if approved, would amount to involuntary servitude, which is prohibited by the Thirteenth Amendment to the U.S. Constitution.

Factual Background:

On May 30, 2020, Debtor filed a bankruptcy petition seeking relief under chapter 7 of the

Bankruptcy Code. According to his schedules, the Debtor has accrued a total of \$130,515.72 in non-consumer debt, with over 90% of it in tax debt. Of this amount, \$121,041.72 is in unpaid tax debt owed to the IRS, and \$9,474 in non-priority unsecured debt. The tax debt on the Debtor's schedules totals 92.7% of the total unsecured debt, which includes as follows:

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(1) Franchise Tax Board 2017 and 2018: \$3,590.04

(2) Franchise Tax Board 2013: \$6,253.72

(3) IRS 2010, 2011, 2013, 2014, 2015, 2016: \$79,241.08

(4) IRS 2017: \$31,956.88

On November 23, 2015, IRS recorded a Notice of Federal Tax Lien for unpaid income taxes owed by the Debtor for tax years 2009, 2010, 2011, and 2013, for a total amount of \$42,421.28, with interest continuing to accrue on these unpaid income taxes. On October 31, 2018, IRS recorded a Notice of Federal Tax Lien for unpaid income taxes owed by the Debtor for tax years 2015, 2016, and 2017 for a total amount of \$42,482.13, with interest continuing to accrue on these unpaid income taxes.

According to Schedules A and B, the Debtor does not own any real property and has personal property valued at \$143,059.58, including \$130,000 in a 457-retirement plan account. The Debtor also has an interest in the pension plan of the City of Los Angeles, and he will receive a monthly stipend upon retirement. On December 14, 2020, Debtor amended his schedules to reflect a net monthly income of \$7,695.32 (reflecting significant payroll deductions) on his Schedule I, and monthly expenses of \$7,696.40 on his Schedule J, resulting in a negative monthly balance of \$1.08

Legal Standards:

Under 11 U.S.C. §706(b), "[o]n request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time." "The Court has discretion to convert based on its determination of what will most inure to the benefit of all parties in interest." *In re Parvin*, 538, B.R. 96, 101-102 (Bankr. W.D. Wash.

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Chapter 7

2015). "Section 706(b) does not provide guidance regarding the factors a court should consider. Since there are no specific grounds for conversion, a court should consider anything relevant that would further the goals of the Bankruptcy Code." *Id.* at 102 (internal citation and quotation marks omitted). Courts have considered a variety of factors in deciding whether to convert a case from chapter 7 to chapter 11 under § 706(b). *Id.* Among the factors considered are whether the debtor can propose a confirmable plan, whether the primary purpose of the chapter 11 is to liquidate or reorganize, and whether conversion benefits all parties in the case. *Id.* (internal citations and quotation marks omitted). A debtor's ability to pay typically is a starting point in the analysis, however, since the whole reason for asking [for] a case to be converted is the assumption that creditors would receive more in a chapter 11 than a chapter 7. *Id.* (internal citations and quotation marks omitted). See also *In re Schlehuber*, 489 B.R. 570, 574 (9th Cir. B.A.P. 2013) ("The Debtor's ability to fund a Chapter 11 plan if he chooses to do so was certainly an important and relevant consideration.").

Contested Issues of Fact:

Debtor asserts that he has amended his schedules three times, with the latest being in mid-December of 2020, which Debtor amended to reflect a steep drop in income. However, Debtor asserts, the IRS chooses to focus on Debtor's past income, which was considerably higher. Debtor argues that, as evidenced by the latest amendment to his schedules, his monthly expenses surpass his monthly income, but the IRS, based on an outdated version of Debtor's schedules, insists his net income is \$2,393.

Debtor also argues that because the automatic stay is still in effect, Debtor is not currently required to make payments on the priority tax debt, contrary to the IRS's assertion in its motion.

In reply, IRS asserts that even using the figures from Debtor's latest

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amended schedules, there is ample income available to pay the priority tax debt and Debtor's unsecured creditors. To arrive at this conclusion, IRS argues that, at the very least, Debtor should consider his child support payments (reportedly to terminate in July of 2021), and the priority tax payments. Together, that amounts to \$2,175.68. Multiplied over a 60-month period yields a total of \$130,540.80, which would be sufficient to pay the IRS debt of \$123,909, with the remainder available to pay unsecured creditors. IRS argues further that if Debtor were to adjust certain voluntary payroll deductions, there would be even more funds available for unsecured creditors, which should lead to the conclusion that Debtor has adequate means to fund a straightforward chapter 11 plan.

The IRS's reconciliation of the factual dispute is effective in demonstrating that Debtor could, rather easily, fund a chapter 11 plan. Thus, to be credible, any argument that Debtor cannot fund a chapter 11 plan would require another drastic negative change in circumstances. The IRS also notes that as of March 2021, Debtor's annual base salary is increasing from \$122,948.80 to \$133,092.08.

Does The Motion Improperly Seek To Circumvent The Bankruptcy Code?

Debtor argues that this motion is merely an attempted end-run around 11 U.S.C. §707(b) because, Debtor argues, since §707(b) might create hurdles for the IRS, the IRS is attempting to sidestep those hurdles by cloaking the motion as one brought under §706(b). Debtor cites some authority standing for the proposition that in cases where involuntary conversion to chapter 11 is sought, §707(b) is usually the proper statutory mechanism. However, Debtor cites no authority that such relief cannot be sought pursuant to §706(b). After all, why would Congress have included it in the first place and refused to remove it from the code altogether? As cited above, courts in this circuit and elsewhere consider conversion from chapter 7 to chapter as perfectly acceptable under §706(b). The court does not see anything nefarious about the IRS using §706(b) to achieve its desired end. On the contrary, although the IRS concedes that involuntary conversion might not

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CONT... Joe Anthony Santa Maria

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be to Debtor's immediate short-term benefit, IRS argues that courts from several circuits have found a benefit to a debtor when the debtor has significant unresolved tax liabilities, domestic support arrearages, or other non-dischargeable liabilities that would survive a chapter 7 discharge but could be addressed through a chapter 11 plan. *See In re Karlinger-Smith*, 544 B.R. 126, 134 (Bankr. W.D. Tex. 2016); see also *In re Decker*, 535 B.R. 841-42 (Bankr. D. Alaska 2015); and *In re Baker*, 503 B.R. 751,758 (Bankr.M.D.Fla. 2013). In those types of debt scenarios, "conversion may not give Debtors immediate relief, but could ultimately result in a better fresh start." *In re Decker*, 535 B.R. at 843.

The court notes that Debtor is claiming that he currently has a negative income stream, but that negative income stream seems caused, in part, by expenses that are either voluntary such as certain payroll deductions for retirement plans , or temporary (child support, set to terminate in three months' time). All told, it seems eminently plausible that Debtor would be able to fund a plan under chapter 11. Stated another way, nothing in the record indicates categorically that Debtor could not fund a plan under chapter 11, and thus, there seems little risk of immediate re-conversion to chapter 7. Indeed, it is not at all clear to the court why Debtor is so against this approach as it would seem a good way for Debtor to deal with what appears to be , at least in good part, non-dischargeable debt.

If the case is converted to chapter 11 and Debtor is obliged to fund the plan as described above (or differently), it is obvious that creditors, and particularly the IRS, would benefit by having their claims paid either in full or nearly in full. Debtor provides no analysis for what creditors might receive in a hypothetical liquidation under chapter 7. It is perhaps worth noting that the chapter 7 trustee, Richard Marshack, filed a "no-asset" report on December 18, 2020, which might give some indication of how much (or little) creditors might receive in a liquidation proceeding. However, Debtor does make a policy argument that if the motion is granted, it would produce a chilling effect among those with primarily non-consumer debt. Debtor would likely not be

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trapped in a chapter 11 plan as this court would still have discretion to re-convert the case to chapter 7 should sufficient cause arise because Debtor would remain a party in interest. Thus, the balance of interests seems to favor conversion as the estate's creditors stand a plausible chance of payment in full, and Debtor can likely pay the claims without being particularly financially hobbled.

The Thirteenth Amendment:

Debtor argues that being compelled to fund a plan would necessarily involve being obliged to work and pay his creditors from his wages, and would, therefore, be akin to or indistinguishable from involuntary servitude, which is generally prohibited by the Thirteenth Amendment. In *In re Gordon*, 465 B.R. 683 (Bankr. N.D. Ga. 2012), the court was confronted with the same argument, that conversion to chapter 11 under §706 violated the proscription on involuntary servitude. The court noted that "courts have consistently found the involuntary servitude standard is not so rigorous as to prohibit all forms of labor that one person is compelled to perform for the benefit of another. The Thirteenth Amendment does not bar labor that an individual may, at least in some sense, choose not to perform, even when the consequences of that choice are exceedingly bad." *Id.* at 696 (internal citations and quotation marks omitted). The court also noted that the *sine qua non* of involuntary servitude is compulsion through physical coercion or legal sanction. *Id.* In *In re Gordon*, the debtor put forth the following examples of how conversion of the case could lead to involuntary servitude:

(i) The debtor's post-petition earnings become property of the estate and must be used as necessary for execution of a confirmed plan. 11 U.S.C. §§ 1115, 1123(a)(8).

(ii) Under 11 U.S.C. § 1129(a)(15), if an unsecured creditor objects to a proposed plan, the debtor must show that the amount of his

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projected disposal income for at least five years is being paid under the plan.

(iii) The debtor has no absolute right to dismiss or convert his case pursuant to 11 U.S.C. § 1112 since the Chapter 11 case was not voluntarily selected by the debtor.

(iv) A creditor can propose a plan under 11 U.S.C. § 1121(c).

(v) The absolute priority rule may require the debtor to surrender his house and other personal possessions.

(vi) The court may find the debtor in contempt for failure to comply with any confirmed plan and such contempt may be punishable by fine or jail. *Id.* at 697.

The *Gordon* court disagreed that these considerations necessarily implicated Debtor's constitutional rights. "The only effect of converting the case under Section 706(b) is that the Debtor's post-petition earnings become property of the estate, which means that, if he wishes to use those post-petition earnings for non-typical purposes, a request for approval to spend the money must be filed with the Bankruptcy Court and the use must be approved. 11 U.S.C. § 363. Conversion to a Chapter 11 also means the Debtor must file certain operating reports with the U.S. Trustee and pay a U.S. Trustee's fee. But this is all that happens upon the conversion of the case. This is different from a Chapter 13 case where, merely upon the filing of the case, the debtor is required to begin making payments and must immediately file a plan with a minimum length of three years." *Id.*

The *Gordon* court noted that there was also a ripeness issue, which

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IRS argues also exists here. The court in Gordon observed, "[t]he Debtor argues payment of his projected disposable income for five years will happen with 'virtual certainty' and in fact is the purpose of the Motion to Convert. There is no doubt that the Debtor's ability to make payments to his creditors is the primary reason for conversion of this case, but the conversion itself does not cause the payment to occur. The Debtor can continue to refuse to offer a payment plan to his creditors if he chooses, and the Court can decide what action to take at the time, based on the facts developed. Perhaps the Debtor's argument is really that it is a 'virtual certainty' he will not propose a repayment plan. If so, that is the Debtor's decision, not the Court's, and the Debtor cannot complain about the consequences of that decision." *Id.* at 698.

In sum, the court finds much to agree with in the Gordon analysis. Furthermore, Debtor has not cited a single case standing remotely for the proposition that conversion to chapter 11 under §706(b) is unconstitutional as violative of the Thirteenth Amendment or any related statute or Act. Thus, the court is unconvinced at this time that Debtor will be forced into a state of involuntary servitude by conversion to chapter 11. The court also notes that Debtor likely has the ability to fund a plan to pay his creditors in full (or nearly so) without undue hardship, and the balance of interests favors conversion to chapter 11. Moreover, the court has not yet seen any reason for the Debtor not to want to use a plan to achieve a manageable resolution of what are otherwise, at least in large portion, non-dischargeable debts.

Grant. Schedule status conference in 90 days.

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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8:20-11560 Joe Anthony Santa Maria

Chapter 7

#7.00 United States Of America's Motion To Delay Entry Of Discharge Pending Motion to Convert Case From Chapter 7 to Chapter 11 Pursuant to 11 U.S.C. § 706(b)

Docket 46

Tentative Ruling:

Tentative for 4/6/21:

This is a motion brought by the United States, through its agency, the Internal Revenue Service ("IRS" or "United States") seeking to delay the entry of discharge until the motion to convert debtor, Joe Anthony Santa Maria's ("Debtor") case to chapter 11 has been heard by this court. Debtor opposes this motion.

Legal Standard

FRBP 4004(b)(1) states in pertinent part, "[o]n motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge." Subsection (c)(1) states in pertinent part, "[i]n a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge[.]"

Should The Motion Be Granted?

Debtor argues that because he has cooperated at every turn during the pendency of the bankruptcy case, he is entitled to a speedy entry of discharge, as evidenced by the word, "forthwith" as it appears in Fed. R. Bankr. P. 4004(c)(1) without having to wait for the motion to convert the case to chapter 11 to be heard. Debtor also argues that the motion was not filed in a timely manner, and should be denied on that basis. Specifically, Debtor argues, the date first set for Debtor's meeting of creditors under 11 U.S.C. §

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341(a) was July 14, 2020. Therefore, per Rules 4004(a) and 1017(e), the deadline for objecting to Debtor's discharge or to file a motion to dismiss was September 14, 2020. Debtor argues that no one asked the court to extend either of those deadlines and none of the exceptions listed in Rule 4004(c)(1) applies to Debtor's case; and Rule 4004(c)(2) does not apply because it only applies to motions by "the debtor," and Debtor did not ask the Court to defer entering a discharge. Moreover, Debtor asserts, a pending motion to convert is not an enumerated exception under Bankruptcy Rule 4004(c)(1).

The IRS persuasively argues that Debtor's characterization of the motion and his timeline are incorrect. IRS asserts that the motion is timely based on the following timeline:

- On September 11, 2020, the United States Trustee (hereinafter "UST") filed a Motion to Delay Entry of Discharge and to Extend Time to File a Motion to Convert Case to a Case Under Chapter 11. See Docket No. 15.
- On October 5, 2020, a Stipulation was filed between the UST and the Debtor. See Docket No. 20.
- On October 13, 2020, the Court entered an Amended Order extending the entry of discharge not to be entered until December 16, 2020. See Docket No. 26.
- On December 14, 2020, another Stipulation was entered between the UST and the Debtor to delay the entry of discharge and to extend time to file a motion to convert the case. See Document No. 32.
- On December 15, 2020, the Court entered an Order approving the Stipulation and extending the entry of discharge not to be entered until January 15, 2021. See Docket No. 33.
- On January 15, 2021, the United States filed a Motion to Delay Entry of Discharge to Preserve Standing to File a Motion to Convert Case from Chapter 7 to a Case Under Chapter 11. See Docket No. 35. The Debtor did not oppose this Motion.

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- By an Order dated February 16, 2021, this Court granted the United States' Motion to Delay Entry of Discharge. See Docket No. 41. According to the February 16 Order, the discharge of the Debtor shall not be entered until after March 15, 2021. See Docket No. 41.
- On March 15, 2021, the United States filed a Motion to Convert Case from Chapter 7 to a Case Under Chapter 11. See Docket No. 43.
- On March 16, 2021, the United States filed the subject Motion to Delay Discharge. See Docket No. 46. At the time the United States filed the Motion to Delay Discharge on March 16, 2021, a discharge had not been issued in this case.

As is clear from the timeline provided by the IRS, the motion appears to be timely based on the diligent requests for extensions to the various deadlines. IRS also argues that the word "forthwith" as it appears in Rule 4004(c)(1) does not mean that the entry of discharge is to be entered with immediacy, but has actually been interpreted to mean "as soon as practicable." *In re Champion*, 600 B.R. 459, 467 (Bankr. S.D. Ga. 2019); *In re Lane*, 37 B.R. 410, 412 (Bankr. E.D. Va. 1984) ("forthwith" means "[w]ithin such time as to permit that which is to be done, to be done lawfully and according to the practical and ordinary course of things to be performed or accomplished") (quoting Black's Law Dictionary).

Here, as the IRS argues, "as soon as reasonably practicable" under the circumstances of this case means as soon as the court has had time to review and decide on two motions: this motion, and the motion to convert the case to chapter 11 (Cal. #6). IRS also persuasively argues that this is especially true considering that (1) the extension to March 15 was explicitly to give the United States time to file a motion to convert and the United States filed a motion to convert by the deadline; and (2) the original January 15 motion was unopposed by the Debtor, who did not make an appearance on the record. Thus, there does not appear to be an undue delay in that would

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prejudice the Debtor's interest in a fresh start.

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As an alternative, IRS suggests that this court can grant the motion through its inherent power granted by 11 U.S.C. §105(a). The IRS request does not seem out of line, and also appears to be supported by adequate authority. Thus, the court can likely grant the relief as requested, and this relief is, of course, necessary to implement the filing of a plan as discussed in #6.

Grant

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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11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#8.00 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 (advanced from 4-20-21 per order approving stipulation to advance s/c re: settlement negotiation entered 3-30-21)

Docket 457

Tentative Ruling:

Tentative for 4/6/21:
Status?

Tentative for 3/9/21:
Status?

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:

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CONT... Kenny G Enterprises, LLC

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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:
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

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CONT... Kenny G Enterprises, LLC

Steve Burnell

Chapter 7

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Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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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:

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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, April 7, 2021

Hearing Room 5B

10:00 AM

8:14-15864 Steven M Dicterow and Catrina L Dicterow

Chapter 11

#1.00 U.S. Trustee's Motion to Dismiss or Convert Reorganized Debtors' Case Under 11 U.S.C. § 1112(b) for Failure to Pay Post-Confirmation Quarterly Fees

Docket 112

***** 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 3-23-21**

Tentative Ruling:

- NONE LISTED -

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
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Wednesday, April 7, 2021

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10:00 AM

8:12-10105 Walldesign, Inc., a subchapter S corporation

Chapter 11

**#2.00 CONT Scheduling And Case Management Conference
(cont'd from 1-06-21)**

[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 4/7/21:

Continue for (one presumes) final status conference August 26, 2021. The court looks forward to a motion for final decree and closing the case at approximately this time.

Tentative for 1/6/21:

Continue for further conference April 7, 2021 @ 10:00AM. Further status report due ten days in advance. Appearance: optional

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?

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

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CONT... Walldesign, Inc., a subchapter S corporation

Chapter 11

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
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10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#3.00 Motion for Order (1) Authorizing Sale of Substantially All of the Debtor's Assets (A) Outside the Ordinary Course of Business, (B) Free and Clear of Liens, Claims and Encumbrances, and (C) for Determination of Good Faith Purchaser under 11 USC Section 363(m); and (2) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases

Docket 54

Tentative Ruling:

Tentative for 4/7/21:

As the papers suggest the disagreements offered by Citizen's Bank have narrowed, and the debtor does not propose at this time to pay unsecured creditors, the court sees little downside in authorizing the sale with proceeds after payment of undisputed portion of the bank's claim to be held in segregated trust pending further order.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#4.00 Final Hearing Re: Motion For Entry Of An Order Authorizing Debtor To Use Cash Collateral On An Interim Basis Pending A Final Hearing
(OST Signed 1-20-21)
(cont'd from 3-31-21 per order approving stip. to cont. use of cash collateral to cont. final hrg on use of cash collateral entered 3-23-21)

Docket 12

Tentative Ruling:

Tentative for 4/7/21:

Inasmuch as the bulk of assets are being sold (see #3) this motion appears largely moot, but in any event, use is authorized on same terms pending close of sale.

Tentative for 1/27/21:

Opposition, if any, due at hearing.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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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

**#5.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of
Preferential Transfers
(cont'd from 3-31-21)**

Docket 1

Tentative Ruling:

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 2/10/21:
Continue as requested assuming some update on settlement efforts at
hearing.

Appearance: required

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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10:00 AM

CONT... Bridgemark Corporation

Chapter 11

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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8:20-10143 Bridgemark Corporation

Chapter 11

**#6.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 3-31-21)**

Docket 1

Tentative Ruling:

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

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

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CONT... Bridgemark Corporation

Chapter 11

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

**#7.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 3-31-21)**

**PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR**

Docket 53

Tentative Ruling:

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16.

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8 and 9. Appearance: required

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.

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CONT... Bridgemark Corporation

Chapter 11

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

**#8.00 Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
(cont'd from 3-31-21)**

Docket 54

Tentative Ruling:

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16.

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:

See #8 and 9.

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

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CONT... **Bridgemark Corporation**
responsive papers.

Chapter 11

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 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

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CONT... **Bridgemark Corporation**
and down." *Id.* at 3113:8-12.

Chapter 11

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 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

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Chapter 11

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 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

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Chapter 11

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 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)).

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Bridgemark Corporation

Chapter 11

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 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

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Chapter 11

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 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

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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 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. Afterall, 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 makes a reorganization over time inherently less feasible than other

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businesses.

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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 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

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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 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

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CONT... **Bridgemark Corporation**

Chapter 11

(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 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.

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

Wednesday, April 7, 2021

Hearing Room 5B

10:00 AM

CONT... Bridgemark Corporation

Chapter 11

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 7, 2021

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#9.00 Motion Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 365 and Fed. R. Bankr. P. 9019 for Entry of Order (I) Approving Settlement Agreement Between the Debtor, Robert J. Hall, and Placentia Development Company and Related Agreements, (II) Approving Sale of Substantially All Assets of the Debtor Free and Clear of Liens, (III) Approving Assumption and/or Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Modifying Order Authorizing Employment of Numeric Solutions LLC, and (V) Granting Related Relief
(cont'd from 3-31-21)

Docket 392

Tentative Ruling:

Tentative for 4/7/21:

The court has seen nothing further from Mr. Kraemer or any other owner of royalty rights. Grant with 14-day rule waived

Tentative for 3/31/21:

Grant. Kraemer's request for more time (not an opposition) was reviewed (although filed late) but will be denied. First, it is not clear that Kraemer enjoys standing as his position seems primarily that of the owner of mineral rights leased to debtor, and the court does not see how this motion, even if granted, would affect rights accruing to that position. The sale seeks transfer of leases but does not purport to affect or amend terms of the leases, or at least that is the reported effect. If cessation of pumping as discussed is a breach of lease, then the leaseholders have their contractual rights, which might or might not lead to monetary damages and might or might not allow a forfeiture of the lease rights held by the operator. But absent a sale, that event looks likely to come to pass in any event as the continuation of this case is not viable in Chapter 11. Kraemer might have a minor amount of royalties owed but that is likely (perhaps more likely) to be paid from proceeds of sale along with all other allowed creditors, or so the papers promise. Also, the argument that more time is needed to evaluate "what to do" sounds like a potential buyer speaking, not the passive owner of royalty streams. Reportedly, Kraemer has

**United States Bankruptcy Court
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Wednesday, April 7, 2021

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10:00 AM

CONT... Bridgemark Corporation

Chapter 11

already looked at being a buyer months ago but decided to pass. He and colleagues might even decide an overbid is now their best maneuver, but this appears to be quite aside from the concerns of allowed creditors who are already promised full payment, and is very late. And, of course, Kraemer promises nothing and puts none of his own capital at risk. The court will not risk the possible catastrophic disruption complained of by debtor of a known deal that reportedly pays allowed claims in full in favor of something as tentative and inchoate as Kraemer's concerns.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Erin E Gray
Matthew J Pero

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 7, 2021

Hearing Room

5B

10:00 AM

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 3-31-21)

Docket 93

Tentative Ruling:

Tentative for 4/7/21:
See #9. Is this now moot?

Tentative for 3/31/21:
See #16.

Tentative for 2/24/21:
Should this be continued as in #s 6-9?

Tentative for 2/10/21:
See #8 and 9.

Tentative for 3/25/20:
Stipulation to continue to 4/29/20 expected per phone message. Status?

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... Bridgemark Corporation

Chapter 11

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, April 8, 2021

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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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/1609432183>

ZoomGov meeting number: 160 943 2183

Password: 818732

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 8, 2021

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
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Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Thursday, April 8, 2021

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 Plaintiff's Application And Order For Appearance And Examination Re:
Enforcement Of Judgment

Docket 331

***** VACATED *** REASON: OFF CALENDAR - EXAMINATION TO
BE CONDUCTED INDEPENDENTLY - COUNSEL TO FILE ZOOM
DETAILS AS 4-01-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

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
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Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Trustee(s):

James J Joseph (TR)

Represented By

James J Joseph (TR)

Lisa Nelson

James Andrew Hinds Jr

**United States Bankruptcy Court
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Thursday, April 8, 2021

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

#2.00 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 12-03-20)

Docket 1

Tentative Ruling:

Tentative for 4/8/21:
Status?

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.

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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
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

8:20-12871 Torrin Myles Rossi

Chapter 7

Adv#: 8:21-01004 Tang v. Rossi

#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523 (a)(2)(A), (a)(4), and (a)(6)

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-06-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 3-26-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Torrin Myles Rossi

Represented By
Ronald A Gorrie

Defendant(s):

Torrin Myles Rossi

Pro Se

Plaintiff(s):

Ke Tang

Represented By
Claudia Coleman
D Edward Hays

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 8, 2021

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

#4.00 PRE-TRIAL 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) (set from s/c hrg held on 10-15-20) (cont'd from 3-25-21 per order approving stip. to cont. pre-trial conf. entered 3-09-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-29-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL
CONFERENCE ENTERED 3-23-21**

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.

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
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Thursday, April 8, 2021

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
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Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#5.00 PRE-TRIAL 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) (cont'd from 3-04-21)

Docket 1

Tentative Ruling:

Tentative for 4/8/21:
Status? Should the answer be stricken?

Tentative for 3/4/21:
Settled? Status?

Tentative for 2/4/21:
Continue to March 4, 2021 @ 10:00AM Plaintiff to give notice.
Appearance: optional

Tentative for 1/7/21:
Continue to hear settlement referred to in December 23, 2020 Notice?

Appearance: required

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.

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Thursday, April 8, 2021

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10:00 AM

CONT... Igor Shabanets

Chapter 7

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

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
Judge Theodor Albert, Presiding
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Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

#6.00 PRE-TRIAL 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) (set from s/c hrg held on 8-13-20) (cont'd from 1-28-21 per order approving stip. to cont. pre-trial conf. entered 1-12-21)

Docket 1

Tentative Ruling:

Tentative for 4/8/21:

Continue to coincide with discovery hearing April 22 @ 11:00AM.

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 8, 2021

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
(cont'd from 3-11-21 per order approving joint stip for extension of deadlines in scheduling order entered 1-25-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-29-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 4-07-21**

Tentative Ruling:

Tentative for 4/8/21:
Status? This matter has been continued several times.

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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Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#8.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
(set from obj. to & mtn to disallow proof of clm no. 65 hrg held on 8-11-20)
(cont'd from 3-11-21 per order approving joint stip. for extension of deadlines in scheduling order entered 1-25-21)**

Docket 258

***** VACATED *** REASON: CONTINUED TO 5-27-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN PARTIES
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 2-25-21**

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.

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.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

Trustee(s):

Richard A Marshack (TR)

Represented By

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

Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

D Edward Hays
David Wood

Chapter 7

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

Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#9.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select
Portfolio Servicing, Inc.
(set from s/c hrg held on 8-11-20)
**(cont'd from 3-11-21 per order approving joint stip. for extension of
deadlines in scheduling order entered 1-25-21)**

Docket 260

***** VACATED *** REASON: CONTINUED TO 5-27-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN PARTIES
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 2-25-21**

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

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**

Thursday, April 8, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#10.00 PRE-TRIAL 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
(set from s/c hrg. held on 8-11-20)
(cont'd from 3-11-21 per order approving joint stip. for extension of deadlines in scheduling order entered 1-25-21)

Docket 476

***** VACATED *** REASON: CONTINUED TO 5-27-21 AT 10:00 A.M.
PER ORDER APPROVING JOINT STIPULATION BETWEEN PARTIES
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 2-25-21**

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

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**

Thursday, April 8, 2021

Hearing Room 5B

11:00 AM

:
Adv#: 8:98-01650 Laguardia v. Tamura

Chapter 0

#11.00 Evaluate Compliance Re: Laguardia's Motion To Compel Responses To Post - Judgment Discovery Requests For Production And Interrogatories; Request For Monetary Sanctions Of \$1,520.00
(cont'd from 2-25-21)

Docket 357

Tentative Ruling:

Tentative for 4/8/21:

As requested by the judgment creditor, the debtor will augment her answers to include a detailed list of efforts undertaken to obtain the requested documents, and/or to give complete and direct answers to questions. The cursory responses given are insufficient. It is insufficient to simply say "Pending request to IRS..." or to answer "undetermined" when asked about income. Some detail must be given as substantiation, such as hours worked and rate of pay. It cannot be the case that debtor has no information. Continue about 45 days to augment answers. While no sanctions are ordered at this time, they may be revisited depending on the completeness of further answers given.

Tentative for 2/25/21:

Debtor seems to concede that her response to this motion is late but asserts that her response was hampered due to difficulty accessing her mailbox in her mobile home park. Debtor argues that since she has not had contact with Plaintiff for more than a decade, responding to his discovery requests will take time as many documents have either been misplaced or lost. Somewhat confusingly, Debtor states that she has attempted to answer Plaintiff's discovery requests to the extent she is able. However, Plaintiff is adamant that no responses to his discovery requests have been received as of the filing of his reply (2/19). Plaintiff also points out that, while he appreciates that it might take some time to gather old documents, these discovery requests were propounded back in November of 2020.

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 8, 2021

Hearing Room 5B

11:00 AM

CONT...

Chapter 0

Unfortunately, Debtor has not put forth any evidence that she has complied or attempted to comply with the discovery requests despite the statement in her response. Thus, it is appropriate for this court to compel such responses.

On the question of sanctions, Plaintiff points out that if a party fails in its opposition to a motion to compel, a sanction is required under California Code of Civ. Proc. §§ 2030.290, subd. (c); 2031.300, subd. (c.) and pursuant to FRCP, Rule 37, subsection (a)(5)(D), unless the Court finds good cause why sanctions should not be imposed. Here, there seem to be several mitigating factors against imposing the proposed sanction of \$1,520 (the cost of preparing this motion), at this time. First, the case is quite old, and Debtor very well might not have access to the requested information anymore. Second, Debtor is unrepresented and thus, may not fully comprehend what is being asked of her. Third, again, as Debtor is pro se, she may not be able to afford to pay the sanction without incurring undue hardship. Of course, only the first consideration is addressed in Debtor's response; the other two are speculation based upon information in the record. Defendant should understand that she is required to make her full, good faith effort to respond to the discovery, and if unable, she needs to go on record under penalty of perjury that such is the case and carefully outline all efforts made. It is unacceptable to simply fail to respond.

The better part of valor at this junction is to grant the motion but withhold imposition of monetary sanctions unless and until Debtor fails to comply. Plaintiff is correct that by the time this motion is heard, approximately three months will have elapsed since the discovery requests were made. That should be ample time for Debtor to locate the information sought by the discovery requests and/or to catalogue the efforts made. Thus, Debtor will be compelled to respond to the discovery requests within 30 days of the order pending further hearing shortly thereafter to evaluate efforts made and to consider again imposition of monetary sanctions.

Grant motion to compel within thirty days of entry and schedule continued hearing April 8 @ 11:00AM to evaluate compliance and consider whether monetary sanctions are appropriate.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 8, 2021

Hearing Room 5B

11:00 AM

CONT...

Chapter 0

Defendant(s):

Dayle Momi Tamura

Represented By
Stephen D Johnson

Plaintiff(s):

James Laguardia

Represented By
Eric Ridley
Gordon A Petersen

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

Tuesday, April 13, 2021

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/1604253232>

ZoomGov meeting number: 160 425 3232

Password: 419120

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**

Tuesday, April 13, 2021

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**

Tuesday, April 13, 2021

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, April 13, 2021

Hearing Room 5B

10:00 AM

8:16-13829 Diana Solis

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-02-21)

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 72

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 USC
SECTION 362 ENTERED 4-06-21**

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, April 13, 2021

Hearing Room 5B

10:00 AM

8:17-10207 Christyna Lynn Gray

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK TRUST, N.A.
Vs.
DEBTOR**

Docket 76

***** VACATED *** REASON: OFF CALENDAR - PER ORDER
GRANTING MOTION FOR RELIEF FROM STAY - SETTLED BY
STIPULATION ENTERED 4/13/2021 - (DOCKET NO. [84])**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christyna Lynn Gray

Represented By
Jacqueline D Serrao

Movant(s):

U.S. Bank Trust, N.A., as Trustee for

Represented By
Christina J Khil
Madison C Wilson
Francis Laryea
Erin Elam
Darlene C Vigil
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, April 13, 2021

Hearing Room 5B

10:00 AM

8:19-12157 Harmony Catrina Alves

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**MATRIX FINANCIAL SERVICES CORPORATION
Vs
DEBTOR**

Docket 66

Tentative Ruling:

Tentative for 4/13/21:

Grant unless current or APO. Appearance: optional

Party Information

Debtor(s):

Harmony Catrina Alves

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**

Tuesday, April 13, 2021

Hearing Room 5B

10:00 AM

8:20-11802 Mary Vermiglio Whitney and Jack Douglas Whitney

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR
ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-M2
Vs
DEBTORS**

Docket 47

Tentative Ruling:

Tentative for 4/13/21:

While the court hopes that the loan modification is successful, this is not a defense to relief of stay. Post confirmation defaults are not well received.

Grant absent agreed APO. Appearance: optional

Party Information

Debtor(s):

Mary Vermiglio Whitney

Represented By
Chris T Nguyen

Joint Debtor(s):

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

Tuesday, April 13, 2021

Hearing Room 5B

10:00 AM

8:20-13359 Michael L Duivis

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR

Docket 25

***** VACATED *** REASON: OFF CALENDAR - VOLUNTARY
DISMISSAL OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY
FILED 3-18-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael L Duivis

Represented By
Mark A Pahor

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Katherine S 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**

Tuesday, April 13, 2021

Hearing Room 5B

10:00 AM

8:21-10637 Ace-Tech Construction

Chapter 7

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

**YOU SUK MIN AND AERAHN PARK
Vs
DEBTOR**

Docket 5

Tentative Ruling:

Tentative for 4/13/21:

Under LBRs notice is required to be given to debtor (not just to counsel), and that does not appear to have been done. Continue to provide notice which can be on opportunity to request hearing. Appearance: optional

Party Information

Debtor(s):

Ace-Tech Construction

Represented By
Young K Chang

Movant(s):

Edward Ip

Represented By
Chi L Ip

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 14, 2021

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.

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/1610985303>

ZoomGov meeting number: 161 098 5303

Password: 638789

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, April 14, 2021

Hearing Room 5B

1:30 PM
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Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, April 14, 2021

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 5B Calendar**

Wednesday, April 14, 2021

Hearing Room 5B

1:30 PM

8:20-12166 Stephen F. Sturm

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 1-20-21)**

Docket 2

Tentative Ruling:

Tentative for 4/14/21:
Continue to May 19, 2021 @ 1:30PM to accommodate mediation.

Tentative for 1/20/21:
See #27. There remains a fundamental, unanswered question. Does Cook have a secured claim and do the promised payments equal that interest in present value terms. The parties should consider mediation to resolve this. Continue.

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

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

Wednesday, April 14, 2021

Hearing Room 5B

1:30 PM

CONT... Stephen F. Sturm Chapter 13

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, April 14, 2021

Hearing Room 5B

1:30 PM

8:20-13359 Michael L Duivis

Chapter 13

#2.00 Confirmation Of Chapter 13 Plan
(cont'd from 3-17-21)

Docket 7

Tentative Ruling:

Tentative for 4/14/21:

Are we focused on the Third Amended at this point? Status? Continuance?

Tentative for 3/17/21:

The Debtor must deal with the trustee's points:

- 1) PLAN PAYMENT DUE. NO PROGRESS SINCE CONTINUANCE.
- 2) NEED BUSINESS BUDGET.
- 3) NO PROVISION FOR PROPERTY TAX AND FTB SECURED/PRIORITY TAX CLAIMS FILED.

Why has nothing been accomplished since last time?

Tentative for 2/17/21:

Is the amended plan opposed?

Party Information

Debtor(s):

Michael L Duivis

Represented By
Mark A Pahor

Movant(s):

Michael L Duivis

Represented By
Mark A Pahor
Mark A Pahor

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

Wednesday, April 14, 2021

Hearing Room 5B

1:30 PM

CONT... Michael L Duivis

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 14, 2021

Hearing Room

5b

1:30 PM

8:21-10045 Amparo M Ulloa

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 3-17-21)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amparo M 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, April 14, 2021

Hearing Room 5B

1:30 PM

8:21-10164 Rhonda Hall Alter

Chapter 13

**#4.00 Confirmation Of Chapter 13 Plan .
(cont'd from 3-17-21)**

Docket 15

Tentative Ruling:

Tentative for 4/14/21:

Where do we stand? Are we focused now on the First Amended Plan filed April 8? Absent compelling reason, it would seem a continuance is indicated to allow timely responses.

Tentative for 3/17/21:

How does debtor intend to deal with US Bank's objection?

Party Information

Debtor(s):

Rhonda Hall Alter

Represented By
Hasmik Jasmine Papian

Movant(s):

Rhonda Hall Alter

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 14, 2021

Hearing Room 5B

1:30 PM

8:21-10184 Brian Kelly

Chapter 13

#5.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

Tentative for 4/14/21:
Debtor must address trustee's points.

Party Information

Debtor(s):

Brian Kelly

Represented By
Richard L. Sturdevant

Movant(s):

Brian Kelly

Represented By
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room

5b

1:30 PM

8:21-10201 Luther E Secrest

Chapter 13

#6.00 Confirmation Of Chapter 13 Plan

Docket 15

Tentative Ruling:

Tentative for 4/14/21:

Debtor must respond to the multiple objections and concerns.

Party Information

Debtor(s):

Luther E Secrest

Represented By
Charles W Daff

Movant(s):

Luther E Secrest

Represented By
Charles W Daff

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 1675 Calendar**

Wednesday, April 14, 2021

Hearing Room 1675

1:30 PM

8:21-10242 Thomas Richard Reynolds

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan

Docket 29

Tentative Ruling:

Tentative for 4/14/21:

Several promises of follow-up documents have been made by debtor. But the court has no report of current status.

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, April 14, 2021

Hearing Room 5B

1:30 PM

8:21-10318 Randy Lee Blassingame

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 4/14/21:
The trustee's points must be answered.

Party Information

Debtor(s):

Randy Lee Blassingame

Represented By
D Justin Harelik

Movant(s):

Randy Lee Blassingame

Represented By
D Justin Harelik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room 5B

1:30 PM

8:21-10343 Jeffrey A. Dailey and Tina M. Dailey

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey A. Dailey

Represented By
Christopher J Langley

Joint Debtor(s):

Tina M. Dailey

Represented By
Christopher J Langley

Movant(s):

Jeffrey A. Dailey

Represented By
Christopher J Langley

Tina M. Dailey

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 14, 2021

Hearing Room 5B

1:30 PM

8:21-10352 Rene Charles Paiz and Teresa Ann Paiz

Chapter 13

#10.00 Confirmation Of Amended Chapter 13 Plan

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rene Charles Paiz

Represented By
Heather J Canning

Joint Debtor(s):

Teresa Ann Paiz

Represented By
Heather J Canning

Movant(s):

Rene Charles Paiz

Represented By
Heather J Canning

Teresa Ann Paiz

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room 5B

1:30 PM

8:21-10388 Marisela Ketcham

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 14

Tentative Ruling:

Tentative for 4/14/21:

There are profound questions about good faith underlying this third case concerning the same assets. Moreover, a relief of stay motion is continued to April 20 which may be highly relevant to the future of the residence. Deny or continue.

Party Information

Debtor(s):

Marisela Ketcham

Represented By
Arlene M Tokarz

Movant(s):

Marisela Ketcham

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 14, 2021

Hearing Room 5B

1:30 PM

8:21-10433 Ferdinand Syegco De Dios and Ma Abigail Ama De Dios

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ferdinand Syegco De Dios

Represented By
Christopher J Langley

Joint Debtor(s):

Ma Abigail Ama De Dios

Represented By
Christopher J Langley

Movant(s):

Ferdinand Syegco De Dios

Represented By
Christopher J Langley

Ma Abigail Ama De Dios

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 14, 2021

Hearing Room 5B

3:00 PM

8:16-10381 Miguel Angel Rojas

Chapter 13

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

Docket 56

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 3-17-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Angel Rojas

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, April 14, 2021

Hearing Room 5B

3:00 PM

8:16-12067 Norberto Valladares

Chapter 13

**#14.00 Trustee's Motion to Dismiss Case
(cont'd from 3-17-21)**

Docket 66

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 4/06/2021**

Tentative Ruling:

Tentative for 3/17/21:

A motion to modify was filed February 23 which the Trustee has recommended. No order has been uploaded yet. Would this modification obviate need for dismissal?

Tentative for 2/17/21:

The reported efforts to resolve defaults and other issues is vague. Grant unless current or the Trustee agrees to more time.

Party Information

Debtor(s):

Norberto Valladares

Represented By
Sunita N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

8:16-12484 Robert Arcadio Acosta

Chapter 13

#15.00 Verified Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision

Docket 55

Tentative Ruling:

Tentative for 4/14/21:
Grant.

Party Information

Debtor(s):

Robert Arcadio Acosta

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, April 14, 2021

Hearing Room 5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#16.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision

Docket 59

Tentative Ruling:

Tentative for 4/14/21:

Is this moot depending on result of modification motion filed March 9?

Tentative for 3/17/21:

Grant unless feasibility issue cured or modification motion on file.

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

**#17.00 Trustee's Motion to Dismiss Case failure to make plan payments
(cont'd from 3-17-21)**

Docket 52

Tentative Ruling:

Tentative for 4/14/21:
See #18.

Tentative for 3/17/21:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

#18.00 Motion to Modify Plan And/Or Suspend Plan Payments

Docket 56

Tentative Ruling:

Tentative for 4/14/21:

In view of trustee's concerns, the court needs to know whether the effort to modify will be prosecuted in which case responses to trustee's points are required.

Party Information

Debtor(s):

Wendy K. McElfish

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, April 14, 2021

Hearing Room 5B

3:00 PM

8:18-10808 Jack Dennis Mitchell and Kathleen Marie Mitchell

Chapter 13

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

Docket 64

Tentative Ruling:

Tentative for 4/14/21:

Grant absent current status or modification motion on file.

Party Information

Debtor(s):

Jack Dennis Mitchell

Represented By
Nicholas M Wajda

Joint Debtor(s):

Kathleen Marie Mitchell

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

8:18-11266 Valerie Jill Campbell

Chapter 13

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

Docket 38

Tentative Ruling:

Tentative for 4/14/21:
Continue pending processing of modification motion.

Party Information

Debtor(s):

Valerie Jill Campbell

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 14, 2021

Hearing Room 5B

3:00 PM

8:18-12963 Emily Frevert

Chapter 13

#21.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 4-14-21)

Docket 38

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 4-07-21

Tentative Ruling:

Tentative for 3/17/21:

Grant unless current or modification motion on file.

Party Information

Debtor(s):

Emily Frevert

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, April 14, 2021

Hearing Room 5B

3:00 PM

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

Chapter 13

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

Docket 141

Tentative Ruling:

Tentative for 4/14/21:

Grant absent current status or modification motion on file.

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

Trustee(s):

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 14, 2021

Hearing Room 5B

3:00 PM

8:18-14071 Victor Arreola and Cindy Morelos Arreola

Chapter 13

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

Docket 95

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 4-06-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Arreola

Represented By
Christopher J Langley
Michael Smith

Joint Debtor(s):

Cindy Morelos Arreola

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, April 14, 2021

Hearing Room 5B

3:00 PM

8:18-14134 Lam Dang Nguyen

Chapter 13

#24.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 3-17-21)

Docket 35

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 4-06-21**

Tentative Ruling:

Tentative for 3/17/21:
Continue to coincide with recent modification motion filed.

Tentative for 1/20/21:
Grant unless current or a new modification motion on file.

Appearance: required

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

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

Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

CONT... Lam Dang Nguyen

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 14, 2021

Hearing Room 5B

3:00 PM

8:19-12157 Harmony Catrina Alves

Chapter 13

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

Docket 62

Tentative Ruling:

Tentative for 4/14/21:

Grant absent current status or modification motion on file?

Party Information

Debtor(s):

Harmony Catrina Alves

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, April 14, 2021

Hearing Room 5B

3:00 PM

8:19-12197 Annelize Ladage

Chapter 13

**#26.00 Trustee's Motion to Dismiss Case
(cont'd from 2-17-21)**

Docket 56

Tentative Ruling:

Tentative for 4/14/21:
Grant absent current status or modification motion on file.

Tentative for 2/17/21:
Grant unless current or modification 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, April 14, 2021

Hearing Room 5B

3:00 PM

8:20-13465 Steve Hoon Lee

Chapter 13

#27.00 Debtor's Motion For Order Disallowing Proof Of Claim Number 5 by Claimant Portfolio Recovery Associates, LLC.

Docket 22

Tentative Ruling:

Tentative for 4/14/21:
Sustain.

Party Information

Debtor(s):

Steve Hoon Lee

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

8:20-13465 Steve Hoon Lee

Chapter 13

#28.00 Debtor's Motion For Order Disallowing Proof Of Claim Number 6 by Claimant Synchrony Bank.

Docket 25

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF A CONTESTED MATTER FILED 3-06-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steve Hoon Lee

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, April 14, 2021

Hearing Room

5B

3:00 PM

8:14-14420 Vivian Anhy Vu

Chapter 13

#29.00 Motion To Remove Abstract Of Judgment, For Compensatory And Punitive Damages, And Attorney's Fees And Costs Against Creditor Discover Bank For Intentionally Violating The Automatic Stay And Discharge, And Refusing To Remove The Abstract Of Judgment
(cont'd from 2-17-21)

Docket 84

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION DISMISSING MOTION TO REMOVE ABSTRACT OF JUDGMENT, FOR COMPENSATORY AND PUNITIVE DAMAGES AND ATTORNEY'S FEES AND COSTS AGAINST CREDITOR DISCOVER BANK ENTERED 3-30-21**

Tentative Ruling:

Tentative for 3/17/21:

The tentative posted below was composed just preceding the last hearing. It was not posted as the court was informed a settlement was at hand. But it would seem the settlement did not occur: therefore, issue OSC in accordance with the tentative decision from February 17. See below:

This is Debtor's motion to remove an abstract of judgment, for compensatory and punitive damages, and attorney's fees and costs against creditor Discover Bank ("Creditor") for intentionally violating the automatic stay and discharge injunction, and refusing to remove the abstract of judgment. Creditor opposes the motion.

1. Factual Background

As alleged by Debtor, the facts are as follows:

The Debtor filed her Chapter 13 Petition on July 16, 2014, and the Plan was confirmed on January 7, 2015. She completed her Chapter 13 Plan

**United States Bankruptcy Court
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Wednesday, April 14, 2021

Hearing Room

5B

3:00 PM

CONT...

Vivian Anhvy Vu

Chapter 13

and received her Discharge on October 17, 2019. The case was closed on November 18, 2019 and recently reopened. The Debtor owns her home located at 12242 Ditmore Street, Garden Grove, CA 92841, and the home was listed in Schedule "A." Additionally, Creditor was listed in Schedule "F" and Creditor filed a Proof of Claim on March 19, 2015.

The Debtor was previously married to Khanh Nguyen ("ex-husband"). The ex-husband filed for divorce in 2010, and the divorce became final in February of 2015. In the divorce the Debtor retained the Home and became the sole owner. Creditor obtained a Judgment against the ex-husband only on June 19, 2015 in the amount of \$18,854.47 (almost a year post-petition and five years after he filed for divorce from Debtor), and recorded an abstract of judgment against the home on May 3, 2016 (almost two years post-petition). The Debtor and her attorney have asked the attorney for Discover Bank, The Winn Law Group, several times for a complete copy of the abstract yet it reportedly took several requests. The judgment against the Debtor's ex-husband was obtained five years after he filed for divorce. The abstract was recorded more than a year after Creditor filed its Proof of Claim. The Debtor is not a judgment debtor on this judgment, so Creditor is apparently trying to collect on a judgment from someone other than the judgment debtor. A demand was made to Creditor to remove the abstract however neither Creditor nor its attorneys have done so.

The Debtor learned of the abstract of judgment beginning in December of 2020 while she was in escrow to sell her home. During escrow, the escrow company sent a portion of the title report to the Debtor informing her of the abstract. Until then, the Debtor was apparently completely unaware of the judgment or the abstract. Creditor reportedly wanted \$28,866.80 paid through the escrow to satisfy the judgment, but the Debtor refused to pay it because she does not owe the money to Creditor. Because of the abstract, Debtor alleges, the buyer cancelled escrow and the sale of the home fell through.

Debtor apparently reached out to counsel for Creditor several times in

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

CONT...

Vivian Anhvy Vu

Chapter 13

late 2020 to clear up any alleged misunderstanding, but to no avail. Debtor reportedly offered counsel for Creditor documentary evidence of (giving Creditor benefit of the doubt) the error but was allegedly ignored. As a result of this alleged misconduct, Debtor asserts that Creditor has engaged in willful violation of the automatic stay and discharge injunction, which entitles her to compensatory and punitive damages, as well as reasonable attorney's fees.

2. Did Creditor Violate the Automatic Stay and Discharge Injunction?

Creditor argues that Debtor has not put forth any competent evidence other than an illegible and incomplete title report, which Creditor asserts does not establish the actual state of title. As such, Creditor argues, Debtor has failed to establish that a lien on the property exists. In fact, Creditor argues that final judgment in Debtor's marriage dissolution action, which resulted in Debtor being awarded the subject property in full, was entered more than a year before Creditor obtained the abstract of judgment against Debtor's ex-husband. Thus, Creditor argues, the abstract of judgment would not and could not have attached as a lien to the subject property. Under this line of thinking any threat of a lien on title would have been an error on the title company's part and not attributable to Creditor [but failure to cooperate post discharge may be harder to explain].

As recently as 2019, the United States Supreme Court in *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) articulated that the proper standard for finding a violation of the discharge injunction is whether there is "no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order." The *Taggart* court deliberately left open whether such a standard should apply to alleged violations of the automatic stay. *In re Freeland*, 2020 WL 4726580, at *2 n.3 (Bankr. D. Or. Aug. 12, 2020).

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

CONT...

Vivian Anhvy Vu

Chapter 13

The court is troubled by the Debtor's allegations that directly implicate a violation of the discharge injunction, and if true, leaves no objectively reasonable basis for concluding that Creditor's conduct might be lawful under the discharge order. Even more troubling is the allegation that as recently as December of 2020, when Debtor was in escrow, Creditor attempted to collect on its judgment debt through the escrow process. See Debtor's motion, p. 4 lines. 9-19. The court sees no objectively reasonable basis for such a demand and so this calls into question Creditor's protestations of innocence. The court is unable to locate any documentary evidence that such an attempt was made by Creditor to collect on its judgment debt through escrow in Debtor's failed sale of her property. Creditor does not directly address this attempt in its opposition. If such documentary evidence does exist, it should be clearly brought to the court's attention as Creditor's opposition to this motion seems to concede that it would have no legal right to collect on the judgment from Debtor. Even if the attempt was to collect on a different debt, such an attempt against Debtor or from Debtor's property could be contumacious as it does not appear Creditor obtained relief from the automatic stay (or discharge injunction) and a simple review of documents available would suggest no right to make a demand upon this escrow.

Debtor's damages are possibly speculative, at least at this point. A sale, even one in escrow, might still fall through for many other reasons, a cloud on title being just one. The court would need to see a more definitive link between the cloud on title and the sale falling through. Some analysis must be also made on whether the amount of lost sale price should result in as high an amount of alleged damages. What are the prospects of a new sale, and at what price? Again, if such evidence exists in the record, the court's attention should be clearly drawn to where such information may be found.

The court also has questions about how the abstract of judgment even showed up on Debtor's title report in the first place if her ex-husband had no interest in the property at the time the abstract of judgment was recorded.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 14, 2021

Hearing Room 5B

3:00 PM

CONT...

Vivian Anhvy Vu

Chapter 13

Was this a title company error? Over caution? But the court is also interested as to why no cooperative action was taken given the communications from both Debtor and Debtor's counsel considering what seems an obvious imposition upon the Debtor. This is a chapter 13 proceeding with extremely limited resources. The court takes a very dim view of situations in which litigants fail to resolve issues through even modest cooperation and needlessly involve the court while driving up administrative costs. If the parties agree that the abstract of judgment should not have attached to Debtor's property, *why, then, is this motion even necessary?* Despite the citation to *City of Chicago v. Fulton*, Sup.Ct. No. 19-357, 592 U.S. ____, 2021 U.S. LEXIS 496 (Jan. 14, 2021) Creditor is clearly playing with fire. This case is distinguishable from *Fulton* in many ways including that this lien (to the extent there ever was a 'lien') arguably went on *after* the petition and so even the most liberal reading of §362(a)(3) as interpreted by the Supreme Court in *Fulton* has little application here. Besides, several other provisions such as §§363(a)(1) or (6) "to recover a claim against the debtor that arose before the commencement of the case..." or (4) "to enforce any lien..." seemingly apply. Creditor's failure to cooperate is frankly inexplicable and looks like it could be an improper assertion of leverage to extort an advantage; Creditor must hope that is not found to be the case.

This court takes violations of its orders seriously, and it is still unclear whether a violation of either the discharge injunction or automatic stay occurred. Debtor's right to a discharge after completing her plan is an important concern. The court will issue an Order to Show Cause why Creditor should not be held in contempt specifically targeted to find out: (1) how an abstract of judgment attributable only to Debtor's ex-husband ended up on Debtor's title report for what was adjudicated to be her separate property; (2) what, if any, efforts Creditor made to involve itself in the sale of Debtor's property in December of 2020 and whether it made improper demands; and (3) a legally cognizable measure of damages. On the issue of damages, Debtor should be prepared to present evidence that Creditor's purported

**United States Bankruptcy Court
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3:00 PM

CONT...

Vivian Anhvy Vu

Chapter 13

unlawful involvement in the sale or failure to remove any improper cloud on title, caused the sale to fall through and what was the amount of economic loss. Attorneys fees and punitive damages are also in the mix but need support by evidence. Creditor is admonished to consider, as may relate to questions of willfulness and punitive damages, how its actions should be judged in what could be construed to be an attempt to improperly exert leverage to collect a discharged debt from an improper party through dubious means.

Continue hearing to coincide with an OSC directed to Creditor to explain itself and requiring Debtor to provide supporting evidence including on the issue of willfulness.

Tentative for 2/17/21:
Continuance?

Party Information

Debtor(s):

Vivian Anhvy Vu

Represented By
Donald Blake Serafano
David Brian Lally

Movant(s):

Vivian Anhvy Vu

Represented By
Donald Blake Serafano
David Brian Lally

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Thursday, April 15, 2021

Hearing Room 5B

9:45 AM

8:00-00000

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/1618188434>

ZoomGov meeting number: 161 818 8434

Password: 412811

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
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Thursday, April 15, 2021

Hearing Room 5B

9:45 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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Thursday, April 15, 2021

Hearing Room 5B

9:45 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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Thursday, April 15, 2021

Hearing Room

5B

9:45 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#1.00 Chapter 7 Trustee's Emergency Motion For Order Approving Compromise Of Controversy Pursuant To Federal Rule Of Bankruptcy Procedure 9019 And Request To Purge This Court's Contempt Order Against Kenneth Gharib

Docket 1006

Tentative Ruling:

Tentative for 4/15/21:
Opposition, if any, is due at 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
Courtroom 5B Calendar**

Tuesday, April 20, 2021

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/1615166006>

ZoomGov meeting number: 161 516 6006

Password: 368119

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, April 20, 2021

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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proceedings, please:

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- 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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Tuesday, April 20, 2021

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
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Tuesday, April 20, 2021

Hearing Room 5B

10:30 AM

8:19-12629 Eduardo Meza

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTOR**

Docket 118

Tentative Ruling:

Tentative for 4/20/21:
Grant unless current post confirmation or agreed APO.

Appearance: optional

Party Information

Debtor(s):

Eduardo Meza

Represented By
Michael F Chekian

Movant(s):

Deutsche Bank National Trust

Represented By
Eric P Enciso
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, April 20, 2021

Hearing Room 5B

10:30 AM

8:20-11188 Coby Lynn McDonald and Marianne Gallagher McDonald

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**WELLS FARGO BANK, N.A.
Vs.
DEBTOR**

Docket 68

Tentative Ruling:

Tentative for 4/20/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Coby Lynn McDonald

Represented By
Michael N Nicastro

Joint Debtor(s):

Marianne Gallagher McDonald

Represented By
Michael N Nicastro

Movant(s):

Wells Fargo 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
Courtroom 5B Calendar**

Tuesday, April 20, 2021

Hearing Room 5B

10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-23-21)**

**WILMINGTON SAVINGS FUNDSOCIETY, FSB
Vs
DEBTORS**

Docket 156

Tentative Ruling:

Tentative for 4/20/21:

What is the status the prompted the original continuance? Absent compelling reasons otherwise, grant.

Appearance: required

Tentative for 2/23/21:

This is a Chapter 7, thus "necessary to a reorganization" does not apply within the meaning of §362(d)(2). There also appears to be some equity. The question of relief of stay revolves around whether there is "cause" including lack of adequate protection within the meaning of §(d)(1). According to the Trustee, there is a settlement pending that will yield about \$300,000 for benefit of the estate which requires a transfer of the estate's interest in the property. That sounds good for the estate but there is no suggestion any of that inures to the benefit of the creditor, so "adequate protection" is not assured. So the court is tasked with deciding whether the equity slice alone amounting to about 18% (assuming these numbers) is enough to afford adequate protection. That is a close question since the usual minimum threshold is about 20%. The court is inclined to continue the stay for a limited period, say 60 days to allow consummation of the pending settlement. More than that should not be expected.

Continue.

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Tuesday, April 20, 2021

Hearing Room 5B

10:30 AM

CONT... Hoan Dang and Diana Hongkham Dang

Chapter 7

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):

Wilmington Savings Fundsociety,

Represented By
Sean C Ferry

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, April 20, 2021

Hearing Room 5B

10:30 AM

8:21-10388 Marisela Ketcham

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-16-21)**

**AJAX MORTGAGE LOAN TRUST 2019-A
Vs
DEBTOR**

Docket 9

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY UNDER 11 USC SECTION 362 ENTERED 4-09-
21**

Tentative Ruling:

Tentative for 3/16/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Marisela Ketcham

Represented By
Arlene M Tokarz

Movant(s):

Ajax Mortgage Loan Trust 2019-A,

Represented By
Renee M Parker

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, April 20, 2021

Hearing Room 5B

10:30 AM

8:21-10534 Linda Nguyen

Chapter 7

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

**UYEN-VI THI BUI
Vs
DEBTOR**

Docket 12

Tentative Ruling:

Tentative for 4/20/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Linda Nguyen

Represented By
Marc A Goldbach

Movant(s):

Uyen-Vi Thi Bui

Represented By
J Scott Bovitz

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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

Tuesday, April 20, 2021

Hearing Room 5B

10:30 AM

8:21-10726 Maria Perez De Reynoso

Chapter 13

#6.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 1303 N. Candlewood Street Anaheim, CA 92805 .

Docket 9

Tentative Ruling:

Tentative for 4/20/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Maria Perez De Reynoso

Represented By
Tyson Takeuchi

Movant(s):

Maria Perez De Reynoso

Represented By
Tyson Takeuchi

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

8:18-10762 Jack Richard Finnegan

Chapter 7

**#7.00 STATUS HEARING Re: United States Trustee's Fifth Motion For An Order Extending The Deadline For The United States Trustee And Chapter 7 Trustee To File Complaints Objecting To Discharge Under and Pursuant To 11 USC Section 727 And FRBP 4004(B)(1)
(set from 1-26-21 hrg held)**

Docket 311

Tentative Ruling:

Tentative for 4/20/21:
No tentative.

Appearance: recommended

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**

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#8.00 Motion to Approve Compromise of Controversy by and between the Chapter 7 Trustee, on the one hand, and Fariborz and Natasha Wosoughkia, on the other, Regarding the Claims Asserted by the Parties in Adversary Proceeding No.8:20-ap-01108 TA; and Proofs of Claim Nos. 14 and 17

Docket 313

Tentative Ruling:

Tentative for 4/20/21:
Grant.

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
Karen S. Naylor

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

#9.00 Debtor's Motion to Convert Case From Chapter 7 to 11.
(cont'd from 3-23-21)

Docket 122

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION TO CONVERT CASE FROM CHAPTER 7
TO 11 (DOCKET 122) FILED 4-13-21**

Tentative Ruling:

Tentative for 3/23/21:

Does the Rule 9019 motion filed March 9, 2021 resolve this?

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

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

CONT... Deborah Jean Hughes

Chapter 7

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, April 20, 2021

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#10.00 First Interim Report and Account of Chapter 7 Trustee and Request For Allowance Of Fees and Reimbursement of Expenses

RICHARD A. MARSHACK AS CHAPTER 7 TRUSTEE:

FEES: \$131,095.72

EXPENSES: \$509.93

Docket 996

Tentative Ruling:

Tentative for 4/20/21:
Allow as prayed. Appearance: optional.

Party Information

Debtor(s):

Jana W. Olson

Represented By
David Brian Lally

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#11.00 Third Interim Application For Allowance Of Fees and Costs

MARSHACK HAYS LLP AS GENERAL COUNSEL:

FEES: \$45,567.00

EXPENSES: \$1,560.45

Docket 992

Tentative Ruling:

Tentative for 4/20/21:
Allow as prayed. Appearance: optional

Party Information

Debtor(s):

Jana W. Olson

Represented By
David Brian Lally

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

8:15-12496 Jana W. Olson

Chapter 7

#12.00 Chapter 7 Trustee's Motion for Order Authorizing Second Interim Distributions to Creditors

Docket 999

Tentative Ruling:

Tentative for 4/20/21:
Grant.

Party Information

Debtor(s):

Jana W. Olson

Represented By
David Brian Lally

Trustee(s):

Richard A Marshack (TR)

Represented By
Sarah Cate Hays
D Edward Hays
Laila Masud

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

8:16-13643 Nezamiddin Farmanfarmaian

Chapter 7

#13.00 Trustee's Final Report And Application For Compensation:

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

DANNING GILL ISRAEL & KRASNOFF LLP, ATTORNEY FOR CH 7 TRUSTEE

UNITED STATES BANKRUPTCY COURT, CLERK OF THE COURT COSTS

PAYNE HICKS BEACH, SPECIAL COUNSEL FOR TRUSTEE FEES

DAVID W. MEADOWS, ARBITRATOR/MEDIATOR FOR TRUSTEE FEES

JUDICATE WEST, ARBITRATOR/MEDIATOR FOR TRUSTEE FEES

HAHN FIFE & COMPANY LLP, TAX PREPARER FEES

Docket 159

Tentative Ruling:

Tentative for 4/20/21:
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

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

CONT...

Nezamiddin Farmanfarmaian

Aaron E de Leest

Chapter 7

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

8:18-11306 Kelvin Q. Tran

Chapter 7

#14.00 Trustee's Final Report And Application For Compensation:

THOMAS H. CASEY, CHAPTER 7 TRUSTEE FEES

THOMAS H. CASEY, ESQ., ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, ACCOUNTANT FOR CH 7 TRUSTEE

UNITED STATES BANKRUPTCY COURT, CLERK OF THE COURT COSTS

Docket 101

Tentative Ruling:

Tentative for 4/20/21:
Allow as prayed. Appearance: optional

Party Information

Debtor(s):

Kelvin Q. Tran

Represented By
James D. Hornbuckle

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, April 20, 2021

Hearing Room 5B

11:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#15.00 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 3-09-21)

Docket 457

***** VACATED *** REASON: ADVANCED TO 4-06-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO ADVANCE STATUS
CONFERENCE RE: SETTLEMENT NEGOTIATIONS ENTERED 3-30-21**

Tentative Ruling:

Tentative for 3/9/21:
Status?

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.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

CONT... Kenny G Enterprises, LLC

Chapter 7

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:
See #15.

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

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

8:20-11517 Boyu Liu

Chapter 7

Adv#: 8:20-01129 FS Hawaii Inc v. Liu

#16.00 Motion Of Global Adult Health Care Services, LLC; Salida Del Sol Cbas; Salida Del Sol Adult Day Health Care, LLC And Li Zhao To Quash Service Of Subpoenas
(OST Signed 4-08-21)

Docket 23

Tentative Ruling:

Tentative for 4/20/21:

This is a motion brought by third parties to quash a series of subpoenas recently issued by the plaintiff. The argument is that in each case there was some alleged flaw in procedure of service, at least as compared with what is required when personally serving a summons. But the argument assumes that the standard is the same for service of summons, and this court is not persuaded this is the right standard under FRCP 45(b) or that "delivery" as used in the Rule necessarily requires personal service. Instead, this court is persuaded by what is described as an emerging "minority view" that all that is required are steps reasonably likely to impart actual notice. See *e.g. Green v. Baca*, 2005 WL 283361 n.1 (C.D. Cal. Jan. 31, 2005) ("The Ninth Circuit has not addressed the issue. The court agrees, however, with those that have held that effective service under Rule 45 is not limited to personal service. First, as noted above, the language of Rule 45 does not explicitly require personal service of a subpoena. Father [sic], it requires only that a copy be 'deliver[ed]: to the person whose attendance is commanded.' Such language 'neither requires in-hand service nor prohibits alternative means of service.' Second, construing Rule 45 to require personal service would render superfluous that part of the rule which states that proof of service is accomplished 'by filing with the clerk of the court ... a statement of the date and manner of service.' Finally, the court sees no policy distinction between Rules 4, 5 and 45, such that service other than personal service should be sufficient under the first two but not the third." (internal citations omitted)). See also: *Performance Credit Corporation v. EMC Mortgage Corporation*, 2009 WL 10675694 *2 (C.D. Cal. April 16, 2009) ("There is a division of authority as to whether [Rule 45(b)] requires 'hand-to-hand'

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

CONT... Boyu Liu

Chapter 7

service, or if some other form of personal service will suffice. A (shrinking) majority still requires hand-to-hand service to comply with Rule 45(b), however a strong, and well-reasoned minority now accepts that some other form of personal services, should the circumstances support it, is acceptable.")

Plaintiff describes the various steps it undertook including hand delivered service upon designated agent (at least respecting the accountancy corp.) with delivery and follow up mailings as to the other three. While Mr. Yu may or may not have been the proper agent, he declares that he forwarded them to debtor. Further, in this case, it appears that there may be some close relationship between the debtor and the various entities, or at least several of them, whether as an officer, or the actual owner, or both, at least as alleged by Plaintiff. In such a case it is even more persuasive that the court should focus more on actual notice rather than upon technicalities. Under that standard it appears very likely the entities and persons served do indeed have notice of what is expected of them. If it develops that Mr. Li Zhao does live in China and not in Orange County, and is legitimately without notice, that will flush out when/if it comes time to enforce the subpoena, but that does not impel the court to quash at this stage, not on this record.

Deny

Party Information

Debtor(s):

Boyu Liu

Represented By
Richard G Heston

Defendant(s):

Boyu Liu

Represented By
Richard G Heston

Plaintiff(s):

FS Hawaii Inc

Represented By
Carlos A De La Paz

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

Tuesday, April 20, 2021

Hearing Room 5B

11:00 AM

CONT... Boyu Liu

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 21, 2021

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/1612181456>

ZoomGov meeting number: 161 218 1456

Password: 970969

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, April 21, 2021

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, April 21, 2021

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, April 21, 2021

Hearing Room 5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual. LLC
(cont'd from 2-10-21)**

Docket 1

Tentative Ruling:

Tentative for 4/21/21:
Continue to June 30, 2021.

Tentative for 2/10/21:
The deadlines proposes for filing of claims are acceptable but should be the subject of their own motion(s). The court is inclined to set March 31 2021 as a continued status conference to coincide with the cash collateral hearing already on calendar, unless it should be a few weeks later to follow a filing of plan and disclosure?

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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

Wednesday, April 21, 2021

Hearing Room 5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#1.10 Final Hearing Re: Motion For Entry Of An Order Authorizing Debtor To Use Cash Collateral On An Interim Basis Pending A Final Hearing
**(OST Signed 1-20-21)
(Cont'd from 4-07-21)**

Docket 12

Tentative Ruling:

Tentative for 4/21/21:

Continue on same terms and conditions until the close of the sale, which the court understands is imminent.

Tentative for 4/7/21:

Inasmuch as the bulk of assets are being sold (see #3) this motion appears largely moot, but in any event, use is authorized on same terms pending close of sale.

Tentative for 1/27/21:

Opposition, if any, due at hearing.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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

Wednesday, April 21, 2021

Hearing Room 5B

10:00 AM

8:21-10668 Expo Marketing Group, LLC, a Delaware limited liab

Chapter 11

**#2.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
LLC, a Delaware limited liability company**

Docket 1

Tentative Ruling:

Tentative for 4/21/21:

Is there any reason to keep this case in Chapter 11? See #5

Party Information

Debtor(s):

Expo Marketing Group, LLC, a

Represented By
Marc C Forsythe

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

Wednesday, April 21, 2021

Hearing Room 5B

10:00 AM

8:19-11153 Harry L Morris, Jr.

Chapter 11

#3.00 Motion For Approval Of Chapter 11 Disclosure Statement And Copy Of Plan Of Reorganization
(cont'd from 2-10-21)

Docket 159

Tentative Ruling:

Tentative for 4/21/21:

Given that the disclosure statement was amended only on April 15, it would appear that a continuance is in order. It also seems that this case is likely to come down to a dispute over the interplay between payment of community debts, payment of equalization, homestead and characterization of certain claims. At the very least the nature of the dispute should be clearly set forth in the disclosure statement and discussion had over what happens if the court ends up ruling against debtor in whole or in part.

Continue.

Tentative for 2/10/21:

The DS has some problems as Debtor seems to admit, especially surrounding the details of the proposed sale. In the reply, Debtor states that the DS will be amended to include details of a pending (?) sale of his real property.

Debtor also concedes that amendment to the DS is required as to the Buncher claim . Debtor also disputes the allegation of fraud in connection with the MORs because he claims that his monthly alimony payments are deducted before funds are added to his DIP account. It is not clear from Ms. Morris' opposition whether she is conceding that Debtor is current on his monthly alimony obligations. Debtor also claims that the opposition confuses "impaired" and "disputed" when discussing Class 2 creditors such as Deutsche Bank and County of Orange. To be clear, Debtor is asserting that those claims are disputed.

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 21, 2021

Hearing Room 5B

10:00 AM

CONT... Harry L Morris, Jr.

Chapter 11

In sum, the DS requires amendment, as Debtor seems to concede. The sale of real property that the entire plan depends upon has not been consummated, despite an alleged sale contract being in place. As the U.S. Trustee points out, there is no timeline for the sale of the property. Some of Mrs. Morris' opposition raise issues of confirmation, not necessarily of adequate disclosure. Still, when the DS is amended, Debtor would do well to take some of Mrs. Morris' comments to heart and address them, particularly, the community property/community debt portion of the opposition. As the U.S. Trustee points out, the feasibility of the plan is open to question. Thus, the hearing on the adequacy of the DS should be continued to allow for a sale to be actually completed (or at least imminent) and for Debtor to address the concerns put forth by the U.S. Trustee and Mrs. Morris. It appears that a motion to approve the sale of real property has been filed and is on calendar for 3/10/21. Continue to either that date or shortly thereafter to allow corrections and supplements to DS.

Party Information

Debtor(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

Movant(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

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

Wednesday, April 21, 2021

Hearing Room 5B

10:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#4.00 Debtor's Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization Dated November 2, 2020
(cont'd from 1-27-21)

Docket 106

***** VACATED *** REASON: CONTINUED TO 7-28-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO EXTEND DATES SET BY
SCHEDULING ORDER AFTER HEARING ON ADEQUACY OF
DISCLOSURE STATEMENT AND CONTINUE HEARING ENTERED 3-
26-21**

Tentative Ruling:

Tentative for 1/27/21:

Debtor's reply indicates an intent to amend the DS consistent with several of the points made in the objections, and particularly, the U.S. Trustee and IRS objections. However, Debtor asks the court to approve the DS with the proposed amendments before actually reviewing them, which is premature given the size and seriousness of the alleged discrepancies. The court requires a hearing on the amended DS to ensure that the proposed amendments cure the defects and shortcomings acknowledged by Debtor and enable the interested parties to conduct their own review. On the bright side, it does not seem that the necessary amendments to the DS will be especially cumbersome, and thus, should not require a considerable continuance period. Debtor appears correct that many of the SIF issues raised are confirmation issues, not disclosure adequacy issues. For example, SIF asserts that the DS does not adequately describe its remedies should the Debtor default under the plan. Debtor persuasively argues that what SIF is really asserting is that the plan is not fair and equitable to them, which is a confirmation issue under §1129(b)(2)(A). In any case, Debtor asserts that SIF will retain the lien securing its claim and receive deferred cash payments having a present value of at least the value of its Allowed Claim and equal to the value of its collateral as of the Effective Date. SIF also raises concerns that the DS does not offer a way for Debtor to pay the balloon payment due in fifteen years. Again, Debtor points out that such income projections are included in the current DS and asserts that this objection is appropriately

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 21, 2021

Hearing Room

5B

10:00 AM

CONT...

Rafik Youssef Kamell

Chapter 11

understood as a confirmation issue because it raises questions of feasibility, not adequate disclosure. While this is true in the abstract, if a confirmation issue is too large or profound, it may also go to the question of whether the additional resources for amendment of a disclosure on a patently unconfirmable plan are prudent. In this category is the question of how debtor intends to amortize a priority claim of the size claimed by IRS in the few remaining months available under the maximum amortization period permitted under §1129(a)(9). The court notes that much of the claim is comprised of estimated taxes, but this threshold issue should be addressed.

Although SIF, an over-secured creditor, points to numerous alleged deficiencies in the DS, none of them appear to be obviously fatal. Debtor will be amending the DS and would be well-advised to take some of SIF's objections seriously by including more direct answers in the amended DS, particularly around the issue of feasibility. Debtor may be correct that many of SIF's objections are confirmation issues, but what harm is there in addressing at least some of them now, particularly on some of the more serious feasibility questions?

As Debtor will be amending the DS as noted above to address both the U.S. Trustee's and IRS's objections, the hearing will be continued to allow Debtor time to make such amendments as appear necessary and allow all interested parties time to review the amended DS. Debtor is advised to address the feasibility questions raised by SIF (and as to the IRS priority claim) as confirmation of the plan will almost certainly be challenged on that ground.

Also, the Declaration of IRS agent Johnson is disturbing. The Debtor cannot expect to obtain an approval of disclosure, or even to remain in Chapter 11, without displaying suitable cooperation with the IRS whose very large claim represents a major impediment. Moreover, this is no longer a young case and non-cooperation at this critical juncture can call good faith in general into question.

Continue. Appearance: required

Party Information

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

CONT... Rafik Youssef Kamell

Chapter 11

Debtor(s):

Rafik Youssef Kamell

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 21, 2021

Hearing Room 5B

10:00 AM

8:21-10668 Expo Marketing Group, LLC, a Delaware limited liab

Chapter 11

#5.00 Motion For Order: 1. Authorizing Sale Of Certain Personal Property; 2. Approving Overbid Procedures In Connection With The Proposed Sale; 3. Confirming Sale To The Third Party Purchaser; 4. Determining That The Buyer Is A Good Faith Purchaser; And 5. Waiving The Fourteen Day Stay Prescribed By Federal Rule Of Bankruptcy Procedure 6004(H)

Docket 13

Tentative Ruling:

Tentative for 4/21/21:
Grant per stipulation.

Party Information

Debtor(s):

Expo Marketing Group, LLC, a

Represented By
Marc C Forsythe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 21, 2021

Hearing Room 5B

10:00 AM

8:19-13957 Rosemaria Geraldine Altieri

Chapter 11

**#6.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Plan
(set from 4-08-20 discl stmt hrg)
(set from confirmation hrg held on 12-09-20)
(cont'd from 3-31-21)**

Docket 66

Tentative Ruling:

Tentative for 4/21/21:
See #8

Tentative for 3/31/21:
Continue to coincide with hearing on final decree April 21, 2021 @ 10:00AM.

Appearance: optional

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

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Hearing Room 5B

10:00 AM

CONT... **Rosemaria Geraldine Altieri** **Chapter 11**

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. 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.

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Santa Ana
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10:00 AM

CONT... Rosemaria Geraldine Altieri

Chapter 11

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, 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

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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 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,

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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 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

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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

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

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Chapter 11

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.

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

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\$1,240,000).

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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, 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.

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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 '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.

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**Rosemaria Geraldine Altieri
B. U.S. Bank National Association**

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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 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.

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**Rosemaria Geraldine Altieri
C. Conclusion**

Chapter 11

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 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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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.

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

#7.00 Final Application for Allowance of Professional Fees and Costs For Period:
9/4/2019 to 12/16/2020

**PAGTER AND PERRY ISAACSON ATTORNEY FOR DEBTOR AND DEBTOR-
IN-POSSESSION:**

FEE: \$79,880.00

EXPENSES: \$5,869.15

Docket 190

Tentative Ruling:

Tentative for 4/21/21:
Allow as prayed.

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

#8.00 Motion For Final Decree and Order Closing Case

Docket 198

Tentative Ruling:

Tentative for 4/21/21:
Grant.

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 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/1606568063>

ZoomGov meeting number: 160 656 8063

Password: 794893

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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8:15-13008 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 3-11-21 per order approving stip. to cont s/c entered 2-25-21)**

Docket 1

Tentative Ruling:

Tentative for 4/22/21:

Deadline for completing discovery: Dec. 31, 2021

Last date for filing pre-trial motions: Jan. 28, 2022

Pre-trial conference on: Feb. 17, 2022

Joint pre-trial order due per local rules.

The court has reviewed the briefs about determination of core vs. non-core. Because the defendant has filed claims it would appear the matter is statutorily core, and unlike some other authority, there is a relationship between the claims and the asserted cause of action which arose during defendant's tenure as an employee of the estate. So, the characterization as a so-called Stern claim does not finally answer the question of whether this court can enter a final judgment. The demand for a jury trial has also interjected some more uncertainty, however, (for legal and practical reasons) and so the court is not inclined to rule finally on the question as it is unnecessary to do so at this time. We will revisit the question at the time of the pre-trial conference, possibly with more briefing requested .

Appearance: required

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith

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CONT... Anna's Linens, Inc.

Chapter 7

Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
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
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

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8:19-12795 Lorraina C. Navarette

Chapter 7

Adv#: 8:19-01209 Lindbergh v. Navarette

#2.00 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 2-11-21)**

[fr: 1/21/20, 4/7/20, 6/23/20]

Docket 3

Tentative Ruling:

Tentative for 4/22/21:

The court is concerned about the inability to incorporate the defendant's views, and her apparent failure to cooperate. Issue OSC in connection with a continued status conference to be heard in about 45 days, with admonition to her that sanctions including striking the answer, may result for failure to cooperate.

Tentative for 2/11/21:

Why no status report from Plaintiff? That was similarly the case at the last status conference in December, 2020. Dismiss for failure to prosecute.

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.

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CONT... Lorraina C. Navarette

Chapter 7

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 -

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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8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

- #3.00** 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
**(cont'd from 2-25-21 per order approving stip. to cont. s/c entered 2-22-21)
[another summons issued on 12-30-20 with the same s/c date per Amna]
[another summons issued on 1-11-21 with same s/c date per Amna]**

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-24-2021 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE STATUS
CONFERENCE ENTERED 4-19-21.**

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

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CONT... Jee Hyuk Shin

Chapter 7

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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Insook Shin	Pro Se
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Seafresh Restaurant	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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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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CONT... Jee Hyuk Shin

Chapter 7

**United States Bankruptcy Court
Central District of California
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Thursday, April 22, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

Adv#: 8:20-01097 AEPC Group, LLC v. SLATE ADVANCE

- #4.00** 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 2-25-21)**

Docket 1

Tentative Ruling:

Tentative for 4/22/21:
Continue to accommodate 9019 motion.

Tentative for 2/25/21:
Per request continue to April 22, 2021 @ 10:00 a.m.

Tentative for 1/7/21:
In view of late status report, continue to February 25, 2021 at 10:00 a.m.

Appearance: required.

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CONT... AEPC Group, LLC

Chapter 11

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
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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Santa Ana
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Thursday, April 22, 2021

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

#5.00 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 3-25-21)

Docket 1

Tentative Ruling:

Tentative for 4/22/21:
Status on default judgment?

Tentative for 3/25/21:
When will the default judgment motion with supporting papers be filed?

Tentative for 2/25/21:
What is status of default judgment application?

Tentative for 1/28/21:
Status on filing of motion supporting default judgment? Appearance: optional

Tentative for 12/10/20:
Continue to January 28, 2021 @ 10:00 a.m. to allow processing of default judgment.

Party Information

**United States Bankruptcy Court
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Thursday, April 22, 2021

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10:00 AM

CONT... Heather Huong Ngoc Luu

Chapter 7

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, April 22, 2021

Hearing Room 5B

10:00 AM

8:20-12910 Michelle Lynn Light

Chapter 7

Adv#: 8:21-01006 King City Entertainment v. Baker, II et al

#6.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523(a)(2)(A) and 523(a)(4)

Docket 1

Tentative Ruling:

Tentative for 4/22/21:
Why no status report?

Party Information

Debtor(s):

Michelle Lynn Light

Represented By
Richard G Heston

Defendant(s):

Joseph Leon Baker II

Pro Se

Michelle Lynn Light

Pro Se

Joint Debtor(s):

Joseph Leon Baker II

Represented By
Richard G Heston

Plaintiff(s):

King City Entertainment

Represented By
Andrew D. Weiss

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, April 22, 2021

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 12-10-20)**

Docket 1

Tentative Ruling:

Tentative for 4/22/21:
Continue to June 23 @ 10:00AM to allow district court's 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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 22, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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
BP Peterman Legal Group, LLC	Pro Se

Plaintiff(s):

Peleus Insurance Company	Represented By Linda B Oliver Andrew B Downs
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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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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, April 22, 2021

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

**#8.00 Andrew R. Corcoran's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 12-20-20)**

Docket 38

Tentative Ruling:

Tentative for 4/22/21:

The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference. By that time, the District Court in Maryland will likely have 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 revisiting this motion.

Stay proceedings pending a renewed status conference in approximately 45 days.

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

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Thursday, April 22, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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 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

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10:00 AM

CONT... **BP Fisher Law Group, LLP**

Chapter 7

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.

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 22, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP
SELECT PORTFOLIO

Chapter 7

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

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, April 22, 2021

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

#9.00 Matthew C. Browndorf's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 12-10-20)

Docket 43

Tentative Ruling:

Tentative for 4/22/21:
See #7

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

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Santa Ana
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Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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

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, April 22, 2021

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

#10.00 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 1-28-21 per order appr. stip. to con't entered 1-27-21) (con't from 3-25-21 per order appr. stip to con't entered 3-9-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-10-21 AT 10:00 A.M.
PER ORDER APPROVING THE STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 4-09-21**

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
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Thursday, April 22, 2021

Hearing Room 5B

10:00 AM

8:17-12900 Harv Wyman

Chapter 7

Adv#: 8:19-01171 NAYLOR v. THE EVERGREEN ADVANTAGE, LLC et al

#11.00 PRE-TRIAL 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)
(set from s/c hrg held on 2-27-20)
(con't from 2-258-21 per order appr. stip. ent. 2-16-2021)

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-24-21 AT 10:00 A.M.
PER ORDER APPROVING SECOND STIPULATION TO MODIFY
SCHEDULING ORDER ENTERED 4-13-21**

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

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Thursday, April 22, 2021

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10:00 AM

CONT... Harv Wyman Chapter 7

RUFFIN ROAD VENTURE LOT 6 Pro Se

BOMOR ENTERPRISES, LLC Pro Se

Joint Debtor(s):

Kim M. Wyman Represented By
Thomas J Polis

Plaintiff(s):

KAREN SUE NAYLOR Represented By
William Malcolm

Trustee(s):

Karen S Naylor (TR) Represented By
Christina J O
Arturo M Cisneros

**United States Bankruptcy Court
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Thursday, April 22, 2021

Hearing Room

5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

- #12.00** PRE-TRIAL 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)
(set from s/c hrg held on 7-30-20)
(cont'd from 2-11-21 per order on stip. to extend discovery and pre-trial deadlines entered 2-09-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-29-21 AT 10:00 A.M.
PER ORDER ON STIPULATION TO EXTEND DISCOVERY AND PRE-TRIAL DEADLINES ENTERED 4-20-21**

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.

Please be advised that CourtCall has announced reduced 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 3/26/20:

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10:00 AM

CONT... Deborah Jean Hughes Chapter 7

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

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, April 22, 2021

Hearing Room 5B

11:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

#12.10 PRE-TRIAL 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) (set from s/c hrg held on 8-13-20) (cont'd from 4-08-21)

Docket 1

Tentative Ruling:

Tentative for 4/22/21:
Continue to July 29 @ 11:00 a.m.

Tentative for 4/8/21:
Continue to coincide with discovery hearing April 22 @ 11:00AM.

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

**United States Bankruptcy Court
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11:00 AM

CONT... Scott A. Tucker

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 22, 2021

Hearing Room 5B

11:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

- #13.00** Motion to Compel Further Responses to Request for Admission, and to Compel Further Production of Documents, as to Defendant, Scott Tucker; Request for Sanctions
(cont'd from 2-25-21)

Docket 10

Tentative Ruling:

Tentative for 4/22/21:
See #12.1.

Tentative for 2/25/21:

The main issue in this motion to compel discovery and for sanctions here is whether Plaintiff has met the procedural requirements under LBR 7026-1, which must be satisfied before filing a motion relating to discovery.

Local Bankruptcy Rule 7026 –1(c)(2) states: “Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.” Furthermore, “[i]f the parties are unable to resolve their dispute, then Local Bankruptcy Rule 7026–1(c)(3) requires that the party seeking discovery must submit with the cooperation of the other party a discovery dispute stipulation in one document identifying separately and with particularity each disputed issue that remains to be determined by the court and the contentions and points and authorities of each party. In the absence of this stipulation or a declaration of lack of noncooperation of the other party, the court will not consider the discovery motion.” *In re Marti*, No. 2:16-AP-01270-RK, 2017 WL

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5B

11:00 AM

CONT... Scott A. Tucker

Chapter 7

2312850, at *1 (Bankr. C.D. Cal. May 26, 2017). Strict adherence to this rule has been required by several courts in this jurisdiction, which have declined to consider discovery motions for failure to satisfy these requirements. See *Id.*; see also *In re Farris-Ellison*, No. 2:11-BK-33861-RK, 2015 WL 3955234, at *2 (Bankr. C.D. Cal. June 26, 2015).

Plaintiff attempts to put all the blame on Defendant's actions for delays resulting in the inability to complete the meet-and-confer and the stipulation of the parties, but it seems Plaintiff is also at fault here. First, the Court's Scheduling Order was entered on August 20, 2020, but Plaintiff did not send the discovery requests to Defendant until October 15, 2020. Additionally, due to clerical error and contested service, the discovery requests were not personally served until October 30, 2020.

Subsequently, Plaintiff's fatal mistake was waiting until December 7, 2020 to correspond with Defendant again, when Plaintiff emailed a Meet and Confer Letter. See Exhibit 1 emails. Under LBR 7026-1(c)(2), this gave Defendant until December 14, 2020 to comply with the meet-and-confer, which is 3 days after the December 11, 2020 deadline set by the Court for filing pre-trial motions in this case. Thus, instead of reacting sooner to Defendant's inadequate and untimely discovery responses, which would have left enough time to satisfy the procedural requirements of LBR 7026-1(c), Plaintiff unfortunately waited to send the Meet-and-Confer Letter until it was practically impossible to conduct a meet-and-confer and prepare a stipulation by the parties before the pre-trial motion deadline. Moreover, Plaintiff did so even with the knowledge that gamesmanship and delay "is the typical behavior of Defendant."

Plaintiff seems to believe that the email communications that took place from December 9-10 constitute a meet-and-confer, but this likely fails to meet LBR 7026-1(c) requirements where "counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute." But even if this were considered to constitute a meet-and-confer, there was certainly no attempt to write a stipulation by the parties as required by LBR 7026-1(c)(3). See Exhibit 1 emails.

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Thursday, April 22, 2021

Hearing Room 5B

11:00 AM

CONT...

Scott A. Tucker

Chapter 7

Therefore, Plaintiff failed to meet the requirements of LBR 7026-1(c), and the court will decline to consider Plaintiff's motion on the merits at this time. However, it is fairly clear that Defendant has been less than cooperative in producing the requested discovery, and is getting by on a technicality here. That maybe works once. Defendant's only excuse for untimely discovery production is "severe economic complications for the Defendant (the Defendant/Debtor is the owner/operator of a restaurant/bar in Huntington Beach, and the government mandated lockdowns, and thus he has had to scramble to maintain a skeleton staff at his business . . ." and Defendant does not even address the extreme failure to produce identified documents alleged by Plaintiff. Economic pressures are not a cognizable excuse for failure to provide discovery.

Thus, it is in the interest of justice for the court to consider extending the deadlines for discovery and pre-trial motions, and to continue this motion to allow one more chance to comply with the required procedures under LBR 7026-1. Both sides are admonished not to test the court further as the question of sanctions remains.

Deny at this time pending further hearing in about 60 days. The court will hear argument as to appropriate extensions of the scheduling order.

Party Information

Debtor(s):

Scott A. Tucker

Represented By
Thomas J Polis

Defendant(s):

Scott Tucker

Represented By
Thomas J Polis

Plaintiff(s):

Scott Churilla

Represented By
Stephanie N West

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

CONT... Scott A. Tucker

Chapter 7

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

Thursday, April 22, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:21-01011 Vibe Micro, Inc. v. Remares Global, LLC

#14.00 Defendant Remares Global, LLC's Motion to Dismiss Complaint Pursuant FRCP 12(b)(6)

Docket 5

***** VACATED *** REASON: OFF CALENDAR - CONTINUED TO MAY 27, 2021 AT 11:00 A.M., PER ORDER GRANTING STIPULATION TO CONTINUE THE HEARING ON MOTION TO DISMISS COMPLAINT ENTERED 4-21-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Remares Global, LLC

Represented By
Alan W Forsley

Plaintiff(s):

Vibe Micro, Inc.

Represented By
Aaron J Malo
Jacqueline A Gottlieb

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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

Thursday, April 22, 2021

Hearing Room 5B

2:00 PM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01125 OOO KARENTA v. Shabanets

#15.00 Plaintiff's Motion For Summary Judgment Or, In The Alternative, Summary Adjudication Of Issues

Docket 12

Tentative Ruling:

Tentative for 4/22/21:

This is a Rule 56 summary judgment motion. It is not opposed. Various theories for relief are stated. Plaintiff would proceed under a theory of collateral estoppel or issue preclusion based upon a default judgment from the Superior Court. The problem with this approach is that there are no findings from the Superior Court and all we have is the generic default judgment form although the complaint contains several alternative alleged causes of action including money had and received and breach of contract, which even if admitted by failure to answer (or in this case by operation of a striking of the answer) are not by their nature within the §523(a)(2)(a),(4) or (6) list of non-dischargeable debts. This blocks the court from being able to find the "actually litigated" and "necessarily decided" elements for application of collateral estoppel. See e.g. *In re Biring*, 2012 WL 370877*5-6, 2012 LEXIS 392*13; See also *Micro, Inc. v. Cantrell (In re Cantrell)* 329 F. 3d 1119, 1124 (9th Cir. 2003) citing *Harmon v. Kobrin (In re Harmon)*, 250 F. 3d 1240,1248 (9th Cir. 2001) [holding that a claim is "necessarily decided" when necessary to the result]. The Mann case is clearly distinguishable because there was a finding as to each claim. But this may not matter too much in the end inasmuch as the plaintiff has provided evidentiary support through a supporting declaration. Moreover, §523(a)(3) [creditors not timely listed for filing of an adversary proceeding] seemingly applies and therefore the complaint is not too late and need not rely upon a finding elsewhere.

Grant based on evidentiary record and failure to list, not on collateral estoppel.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, April 22, 2021

Hearing Room 5B

2:00 PM

CONT... Igor Shabanets

Chapter 7

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Represented By
Bruce A Boice

Plaintiff(s):

OOO KAREN TA

Represented By
Elena Steers

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, April 27, 2021

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/1609281892>

ZoomGov meeting number: 160 928 1892

Password: 205769

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**

Tuesday, April 27, 2021

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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- 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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Tuesday, April 27, 2021

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, April 27, 2021

Hearing Room 5B

10:30 AM

8:20-10220 Antonio Vega Benavides

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-16-21)

**SELECT PORTFOLIO SERVICING INC.
Vs
DEBTOR**

Docket 49

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY UNDER 11 USC SECTION 362 ENTERED 4-01-
21**

Tentative Ruling:

Tentative for 3/16/21:

Nothing further has been offered nor an explanation. Appearance: required

Tentative for 2/9/21:

The court is of course sympathetic to everyone suffering from the pandemic. But it would help if some proposal regarding adequate protection were offered. Will the plan be modified, and if so, when? What is the timetable regarding working out a mortgage assistance with lender, as noted in declaration? No tentative.

Party Information

Debtor(s):

Antonio Vega Benavides

Represented By
Sunita N Sood

Movant(s):

Select Portfolio Servicing Inc., as

Represented By
Joseph C Delmotte

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

Tuesday, April 27, 2021

Hearing Room 5B

10:30 AM

CONT... Antonio Vega Benavides

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, April 27, 2021

Hearing Room 5B

10:30 AM

8:21-10560 Mark Byron Jackson

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY

U.S. BANK NA, SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA
Vs
DEBTOR

Docket 11

Tentative Ruling:

Tentative for 4/27/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Mark Byron Jackson

Represented By
Steven A Alpert

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Nancy L Lee

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Tuesday, April 27, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

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

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

MARSHACK HAYS LLP, ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CH 7 TRUSTEE

U.S. BANKRUPTCY COURT - CHARGES

ANDERSON SEASIDE REAL ESTATE, OTHER FEES

CLARENCE YOSHIKANE, OTHER EXPENSES

COLDWELL BANKER, OTHER FEES

FIRST AMERICAN TITLE CORP, OTHER EXPENSES

MARINERS ESCROW, OTHER EXPENSES

**TRINIDAD ISLAND HOA AND PROGRESSIVE MANAGEMENT, OTHER
EXPENSES**

Docket 227

Tentative Ruling:

Tentative for 4/27/21:
Allow as prayed. Appearance optional

Party Information

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

Tuesday, April 27, 2021

Hearing Room 5B

11:00 AM

CONT... Norman Weaver, Jr. and Lori C. Weaver

Chapter 7

Debtor(s):

Norman Weaver Jr.

Represented By
Michael F Chekian

Joint Debtor(s):

Lori C. Weaver

Represented By
Michael F Chekian

Trustee(s):

Richard A Marshack (TR)

Represented By
Chad V Haes
D Edward Hays

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

Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

8: -

Chapter

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Video/audio web address:

<https://cacb.zoomgov.com/j/1613241466>

ZoomGov meeting number: 161 324 1466

Password: 825772

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
Central District of California
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Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 28, 2021

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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, April 28, 2021

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#1.00 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363 (cont'd from 2-10-21)

Docket 7

Tentative Ruling:

Tentative for 4/28/21:
Continue on same terms pending confirmation hearing.

Tentative for 2/10/21:
Continue on same terms until continue disclosure statement hearing (see # 4.1).

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:

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

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:

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.

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

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, April 28, 2021

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#2.00 Debtor's Motion For Approving The Adequacy Of The Debtor's Amended Disclosure Statement And Setting Dates And Procedures For Approval Of Amended Plan Of Reorganization
(cont'd from 2-10-21)

Docket 188

Tentative Ruling:

Tentative for 4/28/21:
See #3.

Tentative for 2/10/21:

In December the court issued a lengthy tentative ruling describing the shortcomings of Debtor's amended disclosure statement. Unfortunately, as noted by the objectors, U.S. Trustee, Banc of California, and Wells Fargo, many of those shortcomings persist.

Again, the issue flagged by all objecting parties is the absolute priority rule, and in particular, the issue of "new value." In December, the court was skeptical that what Debtor had then proposed to contribute constituted new value, and no market testing appeared consistent with the Supreme Court's decision in *Bank of America NT&SA v. 203 N. La Salle St. Pts.*, 526 U.S. 434, 119 S. Ct. 1411 (1999) was attempted. 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.

To Debtor's credit, there was an attempt to find extra funds to

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10:00 AM

CONT... **Talk Venture Group, Inc.**

Chapter 11

supplement the meager return creditors might receive. Specifically, as noted by the objecting parties, the latest DS states that Debtor will make an additional contribution of \$5,000, which, in the objecting parties' view, does not move the needle as the recovery for creditors will still be only about 1% to be paid over a period of 5 years. However, perhaps sensing that this additional contribution would likely still be considered *de minimis*, in its Reply, Debtor asserts that there will be an even larger contribution totaling now \$26,000. This money reportedly comes from Debtor's principal (\$10,000) and a relative of Debtor's principal (\$16,000). With these additional funds, Debtor asserts that the total of funds available for Debtor's general unsecured creditors is now \$71,866 to be paid over 5 years (though the claims total more than \$4.5 million). That takes the total recovery for creditors to approximately 1.57%, which Debtor concedes is small but argues is not *de minimis*. In support of this assertion, Debtor cites *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 656 (9th Cir. 1997) where the court stated, "[w]e decline to define a bright-line rule, but merely hold that a proposed contribution of one-half of one percent of each of the various quantities judicially recognized as relevant to the substantiality comparison falls within the *de minimis* range." However, that case cites several other cases undercutting Debtor's argument. For example, with respect to the threshold for the "substantial" prong, the *Ambanc* court noted:

"First, \$32,000 is less than 0.5% of the total unsecured debt of approximately \$ 4 million. This percentage is well below the percentage of unsecured debt that other courts have held to be insubstantial as a matter of law. Compare, e.g., *In re Woodbrook Assocs.*, 19 F.3d 312, 320 (7th Cir. 1994) (\$ 100,000 contribution not substantial because it is only 3.8% of \$ 2.6 million unsecured debt); *In re Snyder*, 967 F.2d 1126, 1132 (7th Cir. 1992) ('the disparity between the contribution and the unsecured debt,' at most \$22,000 or 2.2% of approximately \$ 1,000,000 unsecured claims, was 'so extreme . . . there [was] no need to proceed any further . . .'); and *In re Olson*, 80

**United States Bankruptcy Court
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Wednesday, April 28, 2021

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10:00 AM

CONT...

Talk Venture Group, Inc.

Chapter 11

B.R. 935 (Bankr. C.D. Ill. 1987) (\$5,000, or only 1.56% on the \$320,000 due all unsecured creditors, held insubstantial), aff'd, 1989 U.S. Dist. LEXIS 18177, No. 88-4052, 1989 WL 330439 (C.D. Ill. Feb. 8, 1989), with *In re Elmwood, Inc.*, 182 B.R. 845 (D. Nev. 1995) (\$150,000, less than 4% of unsecured debt, approved where a higher contribution would not correct the undesirable location and crime problems associated with the primary asset, an apartment complex)." *Id.* at 655-56.

Debtor has not cited any authority suggesting that his contribution, even with the late enhancements, should be seen as a substantial contribution. On the contrary, there appears to be authority severely undercutting Debtor's argument that the total contributions can be seen as substantial. Debtor's rather creative argument that the new contribution constitutes most of the funds available for general unsecured creditors does not change the fact that the recovery is still below the range of a substantial contribution. Thus, it appears that the objecting parties have raised a large hurdle for Debtor with respect to the absolute priority rule.

The objecting parties also raise issues of feasibility as it is unclear from the MORs and DS how Debtor proposes to adequately fund a plan. Banc of California notes that Debtor's speculative Plan leans on continued demand for ecommerce business and unexplained 25% growth in revenue, even though the Debtor never achieved this result during this bankruptcy proceeding. In reply, Debtor notes that the projection in the amended DS should be interpreted by taking into consideration the fact that Debtor's cumulative profit and loss statement attached to December 2020 MOR is prepared using an "accrual" accounting method, whereas the MOR summary (Exhibit-D) is prepared using the actual receipts and disbursements. But as pointed out by Wells Fargo, this explanation is rather opaque. Debtor also notes that certain expenses will likely be eliminated following confirmation, such as vehicle, professional, and shipping expenses in addition to the elimination of \$10,000 monthly adequate protection payments due to Wells

**United States Bankruptcy Court
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Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

CONT... **Talk Venture Group, Inc.**

Chapter 11

Fargo. Debtor also urges consideration of the effect of the ongoing pandemic and how that has caused supply chain problems resulting in low profits for several months. Despite all these problems, Debtor asserts that its business remains profitable as demonstrated by the November and December 2020 MORs. Debtor asserts its willingness to work with the objecting creditors to work out specific payment plans to ease their anxiety about the feasibility of a confirmed plan. Banc of California is skeptical of the liquidation analysis and believes that once all assets are included, and specifically all litigation and avoidance claims, the creditors of the estate will get more in a liquidation than under this proposed plan. Debtor again reminds the court that if a plan is not confirmed, the liquidation analysis shows that unsecured creditors, such as Banc of California will likely not receive any recovery at all and asserts that there are no viable avoidance actions and the litigation against former managers is certain to be expensive and has no guarantee of a positive outcome.

Also, as noted back in December, Wells Fargo argued that the DS was inadequate because it failed to disclose why junior creditors were being put on equal footing with Wells Fargo despite Wells Fargo's undisputed senior position. Wells Fargo asserts that the amended DS does not provide any illumination on this issue. Wells Fargo also takes issue with the valuation of Debtor and asserts that the DS does provide a user-friendly guide on how to interpret the valuation methods, rendering the appraisal of little value.

In sum, the amended DS is still beset by fundamental problems, mainly the absolute priority rule as was flagged by all three objecting parties, including the U.S. Trustee. The court also sees as problematic the fact that the enhanced contribution was only revealed in Debtor's reply, leaving little time for interested parties to respond. The court notes that there is a line of authority (cited above) that strongly suggests that a recovery of 1.57% is still in the *de minimis* range, and therefore does not qualify as "substantial" for purposes of determining "new value." Debtor has also not cited any contrary authority. The court also has questions about potential litigation against some

**United States Bankruptcy Court
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Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

of Debtor's former managers. This litigation is listed in Debtors schedules as being worth as much as \$700,000, but Debtor states that the litigation costs are prohibitive. There may also be viable avoidance claims against Debtor's principal Paul Kim, which are not adequately addressed.

On the other hand, some of the points raised (absolute priority) are primarily confirmation issues, not necessarily disclosure issues. The reason we are still at the disclosure phase is that the court remains unconvinced that the Debtor is not still in the "patently unconfirmable" status.

As Debtor has the burden of persuading the court that the DS adequately discloses sufficient pertinent information for creditors to vote on a plan, that burden is still not carried as fundamental problems persist and the DS seems to raise more questions than it answers. More importantly, the parties in interest here need to soberly decide how this case will proceed. This is no longer a young case. Will Debtor attempt to cramdown in the teeth of this opposition? If so, one more attempt to amend the DS will be afforded but skepticism remains.

Continue once more

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 28, 2021

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#3.00 Debtor's Motion For Order Approving The Adequacy Of The Debtor's Second Amended Disclosure Statement And Setting Dates And Procedures For Approval Of Second Amended Plan Of Reorganization

Docket 209

Tentative Ruling:

Tentative for 4/28/21:

It appears that stipulations to plan treatment have been obtained from the two main secured creditors. There have been recent pledges of additional capital which assist in the new value question. While still tenuous, there has been an uptick in financial performance per the February MOR lessening the court's concerns on feasibility. No opposition has been filed. Approve and schedule confirmation date.

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger

Movant(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger

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

Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#4.00 Debtor's Motion For Order Approving The Adequacy Of The Debtor's Disclosure Statement And Setting Dates And Procedures For Approval Of Plan Of Reorganization
(cont'd from 2-10-21)

Docket 79

Tentative Ruling:

Tentative for 4/28/21:

See #3. Approve and schedule confirmation date to coincide with Talk Venture's.

Tentative for 2/10/21:

There is considerable overlap with the Talk Venture case (see #4.1). Since feasibility of the Kim matter depends almost entirely on success of Talk Venture, the two cases should probably travel together. Feasibility is a huge issue. Since debtor proposes to keep his interest in Talk Venture absolute priority and new value are also huge issues here, and it would seem that the new value proposed is just as *de minimus* as in that case. The court does not believe waiver of administrative claims in this context fits the definition of "money's worth" at least absent authority to that effect. Continue one more time to coincide with Talk Venture.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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

Wednesday, April 28, 2021

Hearing Room

5B

10:00 AM

8:20-12278 Bryan Joseph Klinger

Chapter 11

#5.00 First And Final Application For Compensation For Period: 9/14/2020 to 11/17/2020:

ILLYSSA I. FOGEL, DEBTOR'S ATTORNEY

FEE:	\$49,050.00
EXPENSES:	\$6.50

Docket 63

Tentative Ruling:

Tentative for 4/28/21:

This is the final application for fees of debtor's counsel in this dismissed case. It is opposed by debtor. Debtor believes, per the Attorney-Client Fee Agreement, that he was only obliged to pay Ms. Fogel for her services up to the \$10,000 retainer and was not responsible for paying anything beyond that. This "misunderstanding" explanation is dubious. First, his interpretation is not what the Fee Agreement says. The \$10,000 is described as an "initial retainer." "Initial" implies something else to come after. Moreover, anyone with even a modest experience in running a Chapter 11 would know that fixed fees are very hazardous because so much is unknown and subject to influence of third parties and the court, and this sum would, in any event, be way too small. Apparently, Debtor reads the Fee Agreement section "Scope of Services" in such a way that it would mean that Ms. Fogel was to incur fees at a rate of \$500 per hour only up to the \$10,000 retainer. This is implausible because the Agreement contains a non-exhaustive list of the services contemplated. Apparently, Debtor believed all those services could be accomplished in 20 hours or less. This would seem to be an unreasonable expectation considering Debtor knew he had a large judgment debt encumbering his property that would require resolution to propose a plan

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

Wednesday, April 28, 2021

Hearing Room 5B

10:00 AM

CONT... Bryan Joseph Klinger

Chapter 11

or move forward with his case. Debtor's explanation is also implausible because, presumably, Debtor was aware of the bills accruing for Ms. Fogel's services, and that those bills exceeded the \$10,000 retainer some time ago. However, Debtor chose not to embark on any formal or informal challenge to those fees until after Ms. Fogel filed her fee application, when it would have been far more reasonable to object to the fees much earlier, or better yet, to have discussed the issue directly with Ms. Fogel once her fees exceeded \$10,000. For reasons unknown, Debtor waited until only very recently to challenge the fees, both with this court and the Orange County Bar Association's Mandatory Fee Arbitration Committee. Sitting on rights is unfortunately something of a pattern for Debtor as that is what allegedly caused the judgment against him to double from an initial \$150,000 to around \$300,000.

It is apparent that Debtor is frustrated at Ms. Fogel's inability to prevent dismissal of the case, but again, that is likely more a result of Debtor's own inaction than any of Ms. Fogel's alleged failings. Although, if, as Debtor apparently contends, he was unaware of the size of the accruing fees and costs because she did not share bills with him, then that is a failing on counsel's part. As Ms. Fogel points out, Debtor was able to resolve his dispute with the judgment creditor, which allowed him to keep his home, largely based on groundwork laid by Ms. Fogel. So, it does not seem accurate to claim, as Debtor does, that Ms. Fogel's efforts produced little, if any, benefit to Debtor. Those efforts deserve just compensation, but what is "just" is elusive. Debtor has not pointed to any specific charges he believes are excessive or unnecessary, only that every charge over \$10,000 is beyond what he believed he authorized.

A major point Debtor does not apparently grasp, however, is that in the end he is not the one who gets to decide the reasonableness of fees in Chapter 11. The court does.

Debtor would have this court defer to the arbitration committee, which

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CONT... Bryan Joseph Klinger

Chapter 11

would likely cause a delay of unknown duration. The Attorney-Client Fee agreement does state that in the event of a dispute, that the parties will submit to binding arbitration. Perhaps that is the appropriate outcome here. Debtor has already initiated the arbitration process and there does not seem to be anything inherently inequitable about upholding the terms of the Attorney-Client Fee Agreement in that respect given that the case has now been dismissed so this court's continuing jurisdiction is somewhat uncertain. Were this a continuing case the court would not defer to some other tribunal to decide the court's exclusive role of allowing reasonable fees within the meaning of 11 U.S.C. §§ 328 and 329. Ms. Fogel suggests that Debtor can simply borrow the funds to pay her fees against his home. Obviously, Debtor objects to this plan to pay Ms. Fogel's fees and complains that it will only increase his financial and emotional stress. It is also uncertain how that process would work. Such a result is also ironic given that solving the debt problem through borrowing and not through the bankruptcy process was the path out of the initial debt problem and awarding a fee that becomes a lien on the home seems the height of irony. But on the other hand, the bankruptcy may have created an environment that enabled a resolution controlled by the Debtor.

It's all very sad. As an alternative to further costs, unpleasantness and waste of time, the court allows fees and costs in the combined and total but reduced sum of \$40,000 as a reasonable fee under the circumstances, against which the \$10,000 is to be credited leaving an unpaid balance owing of \$30,000. This award is without prejudice to further review by the Orange County Bar Association's Mandatory Fee Arbitration Committee to review the dispute, at the election of either party, which committee may adjust the fees and costs in either direction by not more than \$10,000, or may accept this court's determination as is, as final, in addition to whatever relief it deems necessary. Upon completion of this process applicant may submit an order.

Allow total of \$40,000 total subject to conditions outlined above.

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CONT... Bryan Joseph Klinger

Chapter 11

Debtor(s):

Bryan Joseph Klinger

Represented By
Illyssa I Fogel

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10:00 AM

8:18-10486 Ron S Arad

Chapter 11

**#6.00 Objection to Claims Of RBS Citizens, N.A., Citizens Financial Group, Inc
(cont'd from 3-24-21 per order approvg stip. to cont. objection to claims
entered 3-23-21)**

Docket 379

Tentative Ruling:

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Movant(s):

Ron S Arad

Represented By
G Bryan Brannan

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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/1618008158>

ZoomGov meeting number: 161 800 8158

Password: 615622

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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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).

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CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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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
(cont'd from 3-25-21)**

Docket 1

Tentative Ruling:

Tentative for 4/29/21:
Settled? Status?

Tentative for 3/25/21:
Status? Is the case settled? Will there be a stipulation?

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

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CONT... Kristine Lynne Adams

Christopher Minier

Chapter 7

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

- #2.00 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 3-25-21)**

Docket 1

Tentative Ruling:

Tentative for 4/29/21:

An order granting a motion to approve compromise was entered on 3/29/21.
Will this be dismissed?

Tentative for 3/25/21:

Continue to coincide with motion to approve compromise filed March 9.

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

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CONT... **Deborah Jean Hughes** **Chapter 7**
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.

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

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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

- #3.00 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 3-25-21)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION TO DISMISS ADVERSARY PROCEEDING ENTERED
4/19/2021**

Tentative Ruling:

Tentative for 3/25/21:
Status?

Tentative for 2/25/21:
Status? Default entered?

Appearance: optional

Tentative for 1/28/21:
Status on entry of default? Appearance: optional

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

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CONT... Katie Ki Sook Kim
Appearance: optional

Chapter 7

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

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:19-12736 Christina Stolze Lopez

Chapter 7

Adv#: 8:20-01114 Kosmala v. Lopez

#4.00 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)
(cont'd from 1-28-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-05-21 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 4-14-21**

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

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10:00 AM

CONT... Christina Stolze Lopez

Chapter 7

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01131 OneSource Distributors, LLC v. Dang et al

**#5.00 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)
(cont'd from 2-25-21 per order approving stip. to cont. s/c entered 2-16-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-24-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
RESPOND TO THE COMPLAINT ENTERED 4-20-21**

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

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10:00 AM

CONT... Hoan Dang

Chapter 7

Arturo M Cisneros
James C Bastian Jr

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Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01133 Toll Bros, Inc. v. Dang et al

**#6.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(cont'd from 2-25-21 per order approving stip. to cont s/c entered 2-18-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-24-21 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 4-16-21**

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

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CONT... Hoan Dang

James C Bastian Jr

Chapter 7

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10:00 AM

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

Chapter 7

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

#7.00 PRE-TRIAL CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses (cont'd from 1-14-21 per order on plaintiff's mtn to cont. pre-trial conf. entered 12-10-20)

Docket 60

***** VACATED *** REASON: STATUS CONFERENCE SCHEDULED 7-01-21 AT 11:00 A.M. PER ORDER ON STIPULATION ENTERED 3-08-21**

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

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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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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10:00 AM

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

Chapter 7

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

#8.00 PRE-TRIAL CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses (cont'd from 1-14-21 per plaintiff's mtn to cont. pre-trial conf entered 12-10-20)

Docket 70

***** VACATED *** REASON: STATUS CONFERENCE SCHEDULED 7-01-21 AT 11:00 A.M. PER ORDER ON STIPULATION ENTERED 3-08-21**

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

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10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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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Hearing Room 5B

10:00 AM

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

Chapter 7

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

#9.00 PRE-TRIAL CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses (cont'd from 1-14-21 per order on plaintiff's mtn to cont. entered 12-10-20)

Docket 54

***** VACATED *** REASON: STATUS CONFERENCE SCHEDULED 7-01-21 AT 11:00 A.M. PER ORDER ON STIPULATION TO CONTINUE ENTERED 3-08-21**

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

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CONT... Anna's Linens, Inc.

Chapter 7

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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Hearing Room 5B

10:00 AM

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

Chapter 7

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

#10.00 PRE-TRIAL CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses (cont'd from 1-14-21 order on plaintiff's mtn to cont. pre-trial conf. entered 12-10-20)

Docket 42

***** VACATED *** REASON: STATUS CONFERENCE SCHEDULED 7-01-21 AT 11:00 A.M. PER ORDER ON STIPULATION ENTERED 3-08-21**

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

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CONT... Anna's Linens, Inc.

Chapter 7

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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Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability
Of Debt Based On Fraud And Objecting To Discharge Of Debtors
(cont'd from 3-11-21)**

Docket 1

Tentative Ruling:

Tentative for 4/29/21:

Is it really true that the parties are unable to stipulate to any facts? When will the discovery dispute be determine? It does not sound like this case is ready to be set for trial at this point. Should another continuance be given?

Tentative for 3/11/21:

Status?

Tentative for 1/28/21:

All the deadlines have passed but no significant status report has been received despite several continuances. Status?

Appearance: required

Tentative for 9/12/19:

Deadline for completing discovery: February 1, 2020
Last date for filing pre-trial motions: February 18, 2020
Pre-trial conference on: March 12, 2020 at 10:00AM
Joint pre-trial order due per local rules.

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CONT... Fariborz Wosoughkia

Chapter 7

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
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, April 29, 2021

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

- #12.00** PRE-TRIAL 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)**
(set from s/c hrg held on 10-15-20)
(cont'd from 4-08-21 per order approving stip. to cont. pre-trial conf. entered 3-23-21)

Docket 1

Tentative Ruling:

Tentative for 4/29/21:

Neither side can agree to a joint pretrial stipulation? The whole point is defeated by two unilateral statements, and the court is not disposed to devote an entire week of trial dealing with this dispute in its current raw form. It's rather straightforward. There will be some points too obvious for there to be serious controversy. They are agreed and belong on a list. There will inevitably be items not agreed, in which case there will be a list of items that must be litigated. This hopefully is a smaller list but it must be a list nevertheless. Witnesses and exhibits will be identified (numbers for plaintiff and letters for defendant). Exhibits will be presented in three ring binders. Parties are to meet and confer and make a serious effort to do this right. Another failure of this sort will not be well received. Continue for approximately 90 days.

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.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 29, 2021

Hearing Room 5B

10:00 AM

CONT... Young Ha Kim

Chapter 7

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

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, April 29, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01066 Remares Global LLC v. Marshack et al

#13.00 PRE-TRIAL 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)
(cont'd from 4-01-21)**

Docket 5

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
JOINT STIPULATION FOR DISMISSAL OF THE ENTIRE ACTION
ENTERED 4/6/2021**

Tentative Ruling:

Tentative for 4/1/21:
Status?

Tentative for 1/14/21:
How long of a continuance is needed to document the settlement and provide any 9019 notice (if required)?

Appearance: required

Tentative for 7/23/20:
Same schedule as #9.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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

10:00 AM

CONT... Igor Shabanets

Chapter 7

Defendant(s):

Richard A Marshack Pro Se

Igor Shabanets Pro Se

IOS PROPERTIES, LLC 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
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Santa Ana
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Thursday, April 29, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#14.00 PRE-TRIAL CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(set from s/c hrg held on 9-01-20)
(cont'd from 1/7/21 per order approving stip to cont. s/c hrg on mtn for administrative clm by Terrace Tower Orange County, LLC entered 12-09-20)**

Docket 571

***** VACATED *** REASON: CONTINUED TO 6-03-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE DATES PRE-TRIAL STIPULATION AND PRE-TRIAL CONFERENCE RE MOTION FOR ADMINISTRATIVE CLAIM BY TERRACE TOWER ORANGE COUNTY, LLC ENTERED 4-05-21**

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.

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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.

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
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
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Thursday, April 29, 2021

Hearing Room 5B

11:00 AM

8:20-11517 Boyu Liu

Chapter 7

Adv#: 8:20-01129 FS Hawaii Inc v. Liu

#15.00 Motion For Order Staying Discovery Pending Completion Of Court-Ordered Mediation And Extending Deadlines For Completion Of Discovery, Filing Of Pre-Trial Motions And Continuing Pre-Trial Conference

Docket 13

Tentative Ruling:

Tentative for 4/29/21:

Movant's argument that the delay in submitting a Mediation Order should merit a stay and postponement of discovery is not compelling. This is particularly so as reportedly a mediation date within the deadline has been scheduled. While cost saving is certainly among the goals of mediation, Plaintiff is also correct that sometimes discovery can inform the parties' settlement position. But absent a specific stay from the court, parties cannot assume that discovery is to be suspended just because mediation has been ordered.

Party Information

Debtor(s):

Boyu Liu

Represented By
Richard G Heston

Defendant(s):

Boyu Liu

Represented By
Richard G Heston

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
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Thursday, April 29, 2021

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8:19-14912 Igor Shabanets

Chapter 11

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

**#16.00 PRE-TRIAL CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(set from 5-13-20 s/c hrg held)
(cont'd from 4-01-21)**

Docket 1

Tentative Ruling:

Tentative for 4/29/21:
See ## 17 and 18.

Tentative for 4/1/21:
Continue to April 29, 2021 @ 2:00 p.m. to coincide with summary judgment motion.

Tentative for 2/25/21:
What is status of stipulation to consolidate adversary proceedings? Continue SC about 30 days for that to occur.

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.

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CONT... Igor Shabanets

Chapter 11

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
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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
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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

#17.00 Counter-Claimant And Plaintiff Remares Global LLC's Motion For Summary Judgment Or In The Alternative Motion for Summary Adjudication

Docket 116

Tentative Ruling:

Tentative for 4/29/21:

These are two motions for summary judgment under Rule 56 by creditor, Remares Global, LLC. ("Remares") and by the chapter 7 trustee, Richard Marshack ("Trustee") in consolidated adversary proceedings 20-01002 and 20-01079. They are discussed together as there is substantial overlap and they go to the same issues. The primary issue to be resolved through these motions is whether the transfers from debtor, Igor Shabanets or his revocable trust ("Debtor") to Olga Shabanets, Debtor's spouse in her capacity as trustee of the 2012 Irrevocable Trust Agreement of Igor Shabanets u/a/d November 12, 2012 (the "Irrevocable Trust"), which were held to be fraudulent conveyances through Trustee's successful motion for summary judgment back in December 2020, were void *ab initio* or merely voidable. In its adopted tentative ruling from December 10, 2020, the court provided lengthy remarks on how it was inclined to view the issue but invited Remares and Trustee to brief the issue more fully.

The other issues to be resolved through these motions are: (1) whether Remares has any surviving liens on the transferred properties; (2) whether a resulting trust was created because of the Transfers and, if so, (3) whether Remares' liens attached to Debtor's equitable interest in the resulting trust.

1. Facts

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As taken from Trustee's briefs and recited in the court's December 10, 2020 tentative, the following facts are largely if not entirely undisputed:

A. Pre-Bankruptcy

On October 8, 2012, Debtor executed a document entitled Revocable Trust Agreement of Igor Shabanets ("Revocable Trust"), 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. The beneficiaries of the Irrevocable Trust were Olga Shabanets and Debtor's children German Shabanets Oleg Shabanets, and Vasilisa Shabanets.

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 transfers"), 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

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Chapter 7

\$754,007.59 from the Revocable Trust Account 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 Rimmel 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 in favor of the plaintiff Remares 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 at 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 on the sister state judgment ("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 the

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securities and cash transfers. On September 17, 2019, Remares caused Debtor to be served with a California Court's 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 recorded against Debtor in favor of creditor Global Approach, Inc. in 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, 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 a first amended complaint in the State Court Action ("FAC"). On December 21, 2019, Debtor filed a voluntary petition for bankruptcy under Chapter 11 ("Petition Date") initiating this case.

Between January 6-7, 2020 Debtor filed his schedules and statements of financial affairs. Pursuant to Debtor's schedules and 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 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

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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. 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 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

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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 of Requests for Admission, Special Interrogatories, and Request for Production of Documents. Defendants failed to serve any responses to the Trustee. In consequence pursuant to Federal Rule of Civil Procedure 36 all matters contained in Plaintiff's Requests for Admissions were deemed admitted because of 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. Defendants' failure also to file a timely response to the summary judgment motion in the Trustee's avoidance action also filed by Trustee was not addressed.

On September 18, 2020, in the Declaratory Relief Adv. as Dk. No. 35, Remares filed a Motion for summary adjudication ("Remares' 529 MSA") seeking judgment that the 529 savings accounts are not property of the Estate. The Trustee did not oppose Remares' 529 MSA.

On October 29, 2020, Adv. Dk. No. 64, Trustee filed a Motion for Summary Judgment ("Trustee's Avoidance MSJ") regarding Claim Nos. 1-6 as set forth in the FAC. On December 10, 2020, a hearing was held on the Trustee's Avoidance MSJ.

On November 20, 2020, in the Declaratory Relief Adv. as Dk. No. 64, the Court entered an order granting Remares' 529 MSA, ordering \$482,789.07 of the Funds in the Court's registry to be released to Remares ("529 MSA Order"). Debtor appealed the 529 MSA Order, which appeal remains pending.

On February 16, 2021, the court entered an order ("MSJ Order")

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granting the Trustee's Avoidance summary judgment motion, finding that the Transfers were avoided, recovered, and preserved for the benefit of the Estate. The MSJ Order further noted that the effect of the Judgment on Remares' counterclaims remained to be determined.

On February 22, 2021, Vibe Micro, Inc. ("Vibe"), another creditor holding a multimillion dollar judgment against Debtor, filed a complaint ("Vibe Complaint") against Remares, alleging inequitable conduct and seeking equitable subordination or avoidance of Remares' asserted liens, initiating adversary proceeding number 8:21-ap-01011-TA ("Subordination Action"). Among other things, the complaint initiating the Subordination Action alleges that Remares provided inadequate notice to Debtor of its intent to seek entry of a sister-state judgment prior to its entry, and failed to correct material facts presented to the state court in seeking entry of the sister-state judgment. The Subordination Action is pending.

On March 2, 2021, Trustee filed a stipulation to consolidate the Declaratory Relief Action and this adversary proceeding. On March 3, 2021, the Court issued an order approving the stipulation and consolidating this Removed Action and the Declaratory Relief Action ("Consolidated Action"). On March 4, 2021, Remares filed this Motion for Summary Judgment in the Consolidated Action. Trustee then filed a cross-motion for summary judgment.

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

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to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith. FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just.

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex* 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

3. Standing

Trustee argues Remares lacks standing to challenge the wording of

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any order resulting from the fraudulent transfer judgments. Trustee argues that to the extent that Remares seeks to obtain a different remedy from the Trustee on the claims in the Removed Action, Remares is not the real party-in-interest and may not seek a different remedy from the Trustee on the claims in the Removed Action for its own benefit. Trustee argues that he has exclusive standing to pursue the avoidance action until the claim is either abandoned or the bankruptcy case is closed. 11

U.S.C. § 323; *City National Bank v. Chabot*, 100 B.R. 18, 23 (Bankr. C.D. Cal. 1989) ("During the pendency of the Chabots' bankruptcy case, only the Chabots' Chapter 7 trustee had standing to pursue certain state law claims, such as the fraudulent conveyance action that the Bank is now pursuing.")

In response Remares argues that it has both constitutional and prudential standing. "Constitutional standing requires an injury in fact, which is caused by or fairly traceable to some conduct or some statutory prohibition, and which the requested relief will likely redress." *In re Veal*, 450 B.R. 897, 906 (9th Cir. B.A.P. 2011). To have Article III standing, the plaintiff must show "(1) injury in fact; (2) causation; and (3) likelihood that the injury will be redressed by a favorable decision." *Am. Civil Liberties Union of Nev. v. Lomax*, 471 F.3d 1010, 1015 (9th Cir. 2006). Injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *American Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358 (2nd Cir. 2016). Here, Remares alleges it has liens on the Transfers and that Remares would be injured if the court were not to find the liens are perfected against the Transfers.

Remares also argues it has prudential standing. Prudential standing, "imposes limitations on the exercise of federal jurisdiction." *In re Edwards*, 454 B.R. 100, 104 (9th Cir. B.A.P. 2011). "One aspect of prudential standing is that a movant must assert its own legal rights and may not assert the legal rights of others." *Id.* That is what Remares argues it is doing in this adversary

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proceeding.

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As a final basis for standing, Remares argues that it has standing through the Bankruptcy Code. Remares argues that the Bankruptcy Code makes a distinction between the Trustee's sole right to prosecute the fraudulent transfer actions and Remares' right to defend its liens. "The power granted the trustee under 11 U.S.C. § 544(b) does not include the power to avoid the transfers of lien interests in property that are avoidable by lien creditors in the enforcement of their liens. Trustees have neither the authority, nor the responsibility, to enforce creditors' liens in bankruptcy. Lien creditors need not and cannot depend on trustees to enforce their lien rights." *In re Michener*, 217 B.R. 263, 270 (D. Minn. 1998). Remares asserts that its interest in its liens are separate and distinct from Trustee's interest as the representative of the interest of creditors having general unsecured claims.

Although Remares' standing to involve itself in the fraudulent transfer action is arguably suspect given the authority cited by Trustee, Remares enjoys the benefit of the doubt in order to reach the merits since Remares' interests as a lienholder are very much in question here.

4. Void *ab initio* or Voidable?

The central issue common to both motions is whether the Transfers were void *ab initio* (as Remares argues) or voidable (as Trustee argues). As the court understands it, Remares argues that since the fraudulent conveyances were "void" it is as though they never happened, which would allow its judgment and ORAP liens to have attached prepetition before the properties entered the bankruptcy estate. Remares wants treatment as a lien creditor as opposed to a general unsecured creditor. Conversely, if at the time of Remares' levies and ORAP lien Debtor had no remaining property (because all were fraudulently conveyed which seems the case on all but one item of property, the Dana Point Property?) none could attach. Thus, Trustee

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argues, title only revested when the Transfers were avoided, and the stay prevented any liens from attaching.

Remares' arguments are familiar to this court as they are quite similar to those heard in December, although now supplemented with additional authority. Again, as in its opposition back in December, Remares argues that 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. The Trustee apparently does contest the sham nature of the transaction, at least to a degree, but offers little countervailing evidence.

Finally, as a last basis for finding the Transfers void, Remares argues that the Trusts were only Debtor's nominee, 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 nominees.
- (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

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the transferor.

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(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 argues 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. Again, the Trustee does not dispute that these factors obtain, but only about the legal consequences. It seems to the court that this doctrine as explained in *Born v. Koop* and *Leeds* is indistinguishable from void *ab initio* arguments elsewhere but goes more to the concept that the debtor retained an equitable interest, which becomes important later.

Of these arguments again advanced by Remares, this court in its December 10, 2020 adopted tentative ruling remarked that there appeared to be major holes in Remares' analysis. The court's explanation is largely copied below.

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 1013, 1019 (2019) 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 renamed the 'Uniform Voidable Transactions Act' ("UVTA") formerly known as the Uniform Fraudulent Transfer Act (italics added). Section 3437.07 specifically

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includes 'avoidance' as a remedy. This helps explain why many of 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 the Trustee must contend with *Daff v. Wallace (In re Cass)*, 476 B.R. 602, 617-18 (2012) aff'd 606 Fed. Appx. 318 (9th Cir. 2015). In summary judgment and then trial Bankruptcy Judge Kwan held that a creditor's lien could attach post fraudulent transfer on real property (not so much because the transfer is deemed void or at least that was an issue left for trial) but on the point upon which the judgment in *Cass* was upheld both by the BAP and the Ninth Circuit, *i.e.* the result turned on a unique provision of California law that distinguishes it from many authorities discussing the void vs. voidable question, *i.e.* Cal. Code of Civ. Proc. §697.340(a), which 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, but does not reach rental payments, a leasehold estate with an unexpired term of less than two years, the interest of a beneficiary under a trust, or real property that is subject to an attachment lien in favor of the creditor and was transferred before judgment. (*italics added*)

See *In re Cass*, 2013 WL 1459272 at **1, 5-6 and 13-16 (9th Cir B.A.P. 2013); *Gun Bo. LLC v. Westpark One, LLC (In re Westpark One, LLC)*, 2015 WL 5199368 at *2 n.5 (Bankr. D. Ariz. 2015).

Both the BAP and Ninth Circuit in *Cass* expressly declined to reach the question of whether Judge Kwan was correct on the void *ab initio* vs. voidable question mostly because it was unnecessary to decide since the *Cass*

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transfer was of real property.

Insofar as the motions before the court involve the fraudulent conveyance of real property (and the court is not certain that they do), it would seem CCP §697.340(a) and the Ninth Circuit in *Cass* answer the question in Remares' favor. But this still leaves a question of whether the void vs voidable question requires possibly a different answer as to the Cash Transfers and Securities Transfers. Here, Remares is not aided by the statute and we are left solely with the question of whether fraudulent transfers are void *ab initio*.

The court has concerns. The court has trouble squaring void *ab initio* with 11 U.S.C. §551, which provides that a transfer avoided under a variety of sections including 544 or 548 [pertaining to fraudulent conveyances] 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 or should 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. B.A.P. 1996)

Once again, Remares relies heavily on *Cass*, but this court believes that as pertains to an *ab initio* conclusion on personal property fraudulently transferred, *Cass* is distinguishable, though it was affirmed by the BAP. Indeed, on the issue raised by the court, Remares notes that the BAP in *Cass* observed:

Trustee fail[ed] to cite any authority holding that, once a fraudulently transferred property is avoided under state law and recovered and

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preserved under §§ 550 and 551, a secured creditor's perfected judgment lien (or other perfected security interest) disappears. Section 551 does not operate to somehow make a secured creditor's perfected lien disappear upon the trustee's later avoidance of the transfer. That statute is intended to prevent junior lienholders from improving their position at the expense of the estate when a senior lien is avoided. It is not intended to strip from recovered property, interests equal or senior to the transfer avoided. *Assuming the Judgment Creditors had a perfected senior lien in the Residence*, which we believe they did, Trustee took the Residence subject to that senior lien. *Cass* 2013 WL 1459272. at *9 (internal citations and quotations omitted; italics added).

But this does not answer our question because we, unlike in *Cass*, cannot assume the Remares lien was duly perfected in personal property by reason of abstracts of judgment or levies [but does the ORAP lien change things? See discussion below].

Trustee points out that *Cass*, and by extension every case cited in *Cass* was decided before the adoption of the UVTA, which became effective on January 1, 2016. Trustee also points out that the BAP in *Cass* specifically stated: "We express no opinion concerning the bankruptcy court's determination that under California law a transfer of property in fraud of creditors is 'void ab initio' rather than merely 'voidable.'" *Cass* 2013 WL 1459272 at *1. Such a statement from the BAP, though seemingly neutral in tone, only bolsters this court's previously noted skepticism that *Cass* was correctly decided except maybe this narrow issue regarding real property. But see, *Stadtmueller v. Sarkisian (In re Medina)*, 619 B.R. 236, 241 n.5 (9th Cir. B.A.P. 2020) ("By referring to a 'voidable' transfer in the UFTA, 'the legislature intended it to be a limited exception to the general rule that, by nature, fraudulent transfers are void *ab initio*, in order to restrict the ability of a creditor in an avoidance action to set aside a fraudulent transfer to a good faith purchaser for reasonably equivalent value.'" *Daff v. Wallace (In re Cass)*,

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476 B.R. 602, 617 (Bankr. C.D. Cal. 2012), aff'd, 2013 Bankr. LEXIS 4653, 2013 WL 1459272 (9th Cir. BAP Apr. 11, 2013), aff'd, 606 F. App'x 318 (9th Cir. 2015). There is no reason to think that, when it used the term 'voidable,' the legislature intended to give courts discretion or impose an unwritten 'actual damages' element.") But we are not dealing with good faith transferees, nor damages, so the question becomes whether the *Medina* narrow construction of 'voidable' is appropriate, particularly when no authority for this conclusion is cited except *Cass* which, as already discussed, is distinguishable.

Indeed, Trustee argues that cases decided after the adoption of the UVTA evidence a more flexible approach consistent with the language of the statute (§3439.07), which states in pertinent part:

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 3439.08, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedures described in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure, or as may otherwise be available under applicable law.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, the following:

(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or other property of the transferee.

(B) Appointment of a receiver to take charge of the asset transferred or

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other property of the transferee.

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(C) Any other relief the circumstances may require.

One wonders why an injunction under subsection (3)(A) might be needed if the transfer is void *ab initio* or why it should make any sense to avoid only a portion of a transfer "to the extent necessary to satisfy the creditor's claim" as described in subsection (a)(1) if the transfer is void *ab initio*?

Trustee argues that the caselaw after the adoption of the UVTA do not imply that fraudulent transfers are *per se* void, but rather, that they can be voided at the court's discretion and consistent with principles of equity. See *Moofly Productions, LLC v. Favila*, 46 Cal.App.5th 1, 8 (2020) ("In most instances, courts have considered suits to reverse fraudulent transfers to be actions at equity.") Thus, Trustee argues, by statutory authority and principles of equity the just outcome is to hold the fraudulent conveyances as voidable, as to hold them void *ab initio*, here would only benefit Remares. Well, maybe. Unfortunately, Trustee's argument is not supported by any definitive caselaw.

5. Does Remares Have Any Liens on The Transfers?

Remares' declaratory relief claim requests that the Court find Remares has liens on the Transfers. Remares asserts that state law determines whether it has liens on the Transfers and Trustee's recovery on the Transfers does not avoid Remares' liens. Specifically, Remares asserts that it has liens on the Transfers because of the Florida and California writs of execution and the ORAP lien.

Trustee argues that Remares' liens did not attach to the Transfers because they were property of the Irrevocable Trust at the time any lien would have attached. Trustee cites *Empire Props. v. City of Los Angeles*, 44 Cal.App.4th 781, 786-87 (1996) for the proposition that under California law,

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an irrevocable trust provides its beneficiaries with "a vested and present beneficial interest in the trust property" and divests the settlor of any ownership interest in such property. Once a settlor transfers property into an irrevocable trust, he no longer has any ownership interest in the property. See *Laycock v. Hammer*, 141 Cal.App.4th 25, 31-32 (2006). Also, "the federal courts have found that when a settlor has taken funds from an irrevocable trust in violation of the terms of the trust, the settlor's breach of duty will not bring the trust corpus into the [probate] estate for purposes of calculating the estate tax." *Id.*

Here, Trustee argues, the Transfers were indisputably made to the Irrevocable Trust and Remares cannot show that the Transfers were void. As the caselaw cited above notes, once the transfer from the settlor to the irrevocable trust is complete, the settlor is divested of all interests in the transferred funds unless the settlor is also a beneficiary of the irrevocable trust. Trustee also argues that the Irrevocable Trust is considered a separate legal entity from Debtor, and so the Irrevocable Trust cannot be a nominee holder of property of the Debtor because Debtor is not also a beneficiary.

Where there could be disputed issues of material fact is that Remares argues that Debtor, despite not having legal authority to exercise control over the funds transferred to the Irrevocable Trust, he did in fact exercise such control and essentially used those funds as he pleased. Remares asserts that Olga's position as trustee was essentially a simple formality, but Debtor, for all intents and purposes, remained in *de facto* control of the funds. In effect, Remares argues these were sham transactions. Trustee maintains that such assertions are implausible and have not been established in the record. Remares goes on to assert that the Irrevocable Trust was just used as a shelter for Debtor, and was, therefore, not created for a valid purpose. Trustee points out that the Irrevocable Trust was created many years before the Transfers occurred, so any argument that the Trust was created so that Debtor could shield or hide funds while still having unfettered access, makes Remares' assertion far-fetched. The court, being with familiar with Debtor's

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antics, sees Remares' version of the facts as eminently plausible as he has not shown himself to be one who cares much for what the law prohibits. Thus, whether the Irrevocable Trust was created or used for an improper purpose does seem to be a triable issue of material fact.

A. The Florida Writ of Garnishment

As to the Florida Writ of Garnishment creating a lien on the Transfers, Trustee asserts that no such lien was created. Remares concedes that the Florida Judgment Lien did not attach to the Irrevocable Trust Account and did not create a lien on any funds. However, Remares argues that under Florida law, service of the writ of garnishment creates a lien because title to funds fraudulently transferred never passes from the transferor. See *Florida Land Title Co. v. Martinez*, 1995 WL 644217, at 6 (M.D. Fla.) Thus, Remares argues, as this court has already adjudicated the Transfers as fraudulent conveyances, under Florida law, title to those funds never passed from Debtor despite being in the possession of the Irrevocable Trust.

Trustee points out that even if Remares is correct about the law in Florida, Remares still loses because the Writ of Garnishment dissolved for want of a judgment against Debtor proving the grounds upon which the writ was issued as required under Fla. Stat. §§ 77.07(5) and 77.083. Rather, Trustee argues, Remares served its Writ of Garnishment on Merrill Lynch, and on November 7, 2019, the court entered an order dissolving the Writ of Garnishment to Merrill Lynch. Thus, Trustee persuasively concludes, as the Writ of Garnishment was dissolved, so too was any lien created thereby.

B. California Writ of Execution and Notice of Levy

Remares argues that on August 26, 2019, Remares also caused a writ of execution to be served upon Merrill Lynch in California and also asserts that California law applies because the writ was issued in California and the writ was to enforce a California judgment. Remares argues that a California Sheriff's levy under a writ of execution is an execution lien. *In re Hernandez*,

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468 B.R. 396, 402 (S.D. CA 2012). "A levy on property under a writ of execution creates an execution lien on the property *from the time of levy* until the expiration of two years after the date of issuance of the writ unless the judgment is sooner satisfied." CCP § 697.710 (italics added). Thus, Remares concludes, Remares' served writ of execution created a lien on the Transfers.

Trustee counters by arguing that again Remares does not have a lien as a matter of law because, a levy on property under a writ of execution creates an execution lien *from the time of levy*. Though no direct authority is cited, according to Trustee, because the funds were never actually levied by a sheriff or otherwise no lien was created. Trustee's interpretation of the statute appears to be more correct. Remares does not dispute that the funds were not actually levied. Instead, Remares asserts only that a writ of execution and notice of levy were served, and that, according to Remares, was sufficient to create a lien, but cites no direct authority. Thus, Trustee is probably correct that, as a matter of law, the writ of execution and notice of levy were insufficient to create the lien without actual levying of the funds.

C. The ORAP Lien

On September 17, 2019, Remares caused debtor to be served with an ORAP in California. California law applies because the ORAP was issued in California and was part of enforcing the California judgment. A lien is created on all the debtor's nonexempt personal property when the debtor is served with an order to appear for a debtor's examination. *In re Burns*, 291 B.R. 846, 852 (9th Cir. B.A.P. 2003); CCP §708.110(d). "[T]he lien upon all nonexempt property is created at the time the judgment debtor is served with notice of the examination." *Imperial Bank v. Pim Electric, Inc.*, 33 Cal.App.4th 540, 552-53 (1995). Here, Remares notes, at the time the ORAP was served, the Transfers were with the Irrevocable Trust but remained under Igor's *de facto* control as he instructed Olga where to transfer funds (e.g. to SIG and Newform) and used them for his personal benefit. Thus, Remares concludes, all the Transfers can be traced to Igor's revocable trust and personal bank

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accounts. Thus, Remares' service of the ORAP on Debtor caused it arguably to have a lien on the Transfers.

Again, Trustee argues that since the funds were indisputably in the possession of a separate legal entity (the Irrevocable Trust), over which Debtor had no legal right to control, the funds had passed out of Debtor's legal right to possess. Thus, Trustee argues, the ORAP lien did not attach to any of the Transfers as they were not legally Debtor's property. Trustee also asserts that as the Transfers were avoided as fraudulent conveyances, under the UVTA the Transfers were recovered for the benefit of the Estate, and not returned to Debtor.

The question presented here, which neither side answers, is whether the language of CCP §708.110 governing ORAP liens ["Service of the order creates a lien on the personal property of the judgment debtor...."] is a close (or close enough) analog for the language which was determinative in *Cass* in CCP §697.340(a)? Here the language simply says, "personal property", no reference is made to "equitable" interests which was pivotal in *Cass*. No case is cited for the proposition that ORAP liens reach these sorts of "equitable" interests outside the real property context.

D. The Resulting Trust

"State law, here California, determines whether a valid trust exists" *In re Chaleunrath*, 2006 WL 6810921, * 5 (9th Cir. B.A.P. 2006). "[U]nder established common law in this state a resulting trust may arise from a transfer of property under circumstances showing that the transferee was not intended to take the equitable or beneficial interest." *Fidelity National Title Ins. Co. v. Schroeder*, 179 Cal.App.4th 834, 849 (2009). A creditor can raise, "under a resulting trust theory, the issue of whether a debtor retained an equitable interest in the property." *Id.* (citing *Altramarano v. Swan*, 20 Cal.2d 622 (1942)).

Here, Remares asserts that Debtor never intended for the Irrevocable

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Trust to take beneficial interest of the transferred funds. Indeed, Remares argues that Olga just ratified Debtor's wishes such that there was no real barrier between Debtor and the funds in the Irrevocable Trust. Thus, Remares concludes, the court should find the existence of a resulting trust as a matter of equity. This would be a just result, Remares argues, because (1) Remares incurred \$482,650.05 in attorney's fees and costs from March 2018 to February 29, 2020 to: (i) obtain the Florida judgment against Debtor, (ii) enforce the Florida Judgment, (iii) file the California sister-state judgment, (iv) enforce the California sister-state judgment, including levying Merrill Lynch twice to seize the Transfers, and (v) to cause the Court to order Merrill Lynch to deposit the transfers into the Court's registry; (2) Debtor made the Transfers to avoid Remares' collection efforts; (3) Remares is the only creditor who has claimed a lien on the Transfers; (4) Remares' liens attached more than 90 days from the Petition Date; and (5) if Remares had not been "racing" to the courthouse, Debtor would likely have spent all the Transfers, as he was spending about \$250,000 a month.

Trustee argues that a resulting trust is not just or equitable here because "a resulting trust arises to enforce the inferred intent of the parties." *Dabney v. Philleo*, 38 Cal.2d 60, 68 (1951). A resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest. *Lloyds Bank Cal. v. Wells Fargo Bank*, 187 Cal. App. 3d 1038, 1042-43 (1986). Furthermore, Trustee argues that a resulting trust is not a claim for relief but is actually a remedy. *Stansfield v. Starkey*, 220 Cal.App.3d 59, 76 (1990).

Trustee notes that Debtor intended the Irrevocable Trust to preserve funds for his children. Remares and Trustee agree that Debtor's intent was fraudulent in nature, but they disagree about whether Debtor intended the money to go to his children. Trustee apparently takes Debtor at his word, despite Remares' assertions that Debtor was actually using the money for his own personal benefit. Issues of intent are always factual inquiries and as such, are not appropriate for summary judgment. Thus, the resulting trust

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cause of action (or remedy) because it hinges on Debtor's intent, is a triable issue of material fact, which cannot and should not be decided in a summary proceeding.

6. Conclusion

There is a lot going on in this motion. The court finds that *Cass* as affirmed by the Ninth Circuit probably seals the issue with respect to real property transfers, to the extent they are at issue here, because the court does not read the Trustee to really contend that Debtor did not continue to hold at least an equitable interest in title notwithstanding the Transfers. Consequently, whether the transfer was void *ab initio* Remares held a perfected lien which would adhere to the property because the abstract reached equitable interests. But the question gets murkier regarding the transfers of personal property. On resulting trust there are factual issues not amenable to summary adjudication. There appear to be procedural infirmities as well and an open question of whether ORAP liens also extend to equitable interests that might have been created by arguably sham transfers of personal property between the revocable and irrevocable trusts. Stated another way, should the court embrace the void *ab initio* ruling in *Cass*, or stay content with being guided only by those portions the BAP and Ninth Circuit affirmed? The court is not persuaded on those points, as the court is still unpersuaded that the court does not have discretion under the UVTA to fashion a remedy most consistent with equity and the ratable distribution purposes of bankruptcy.

Grant Remares' motion as pertains to any real estate transfers. Deny as to all other issues.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

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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 Tinho Mang
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Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays Tinho Mang
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Adv#: 8:20-01002 Richard A Marshack in his capacity as Chapter 7 Tr v. Olga Shabanets, as

#18.00 Plaintiff's Motion for Summary Judgment Or, In The Alternative, Summary Adjudication of Issue

Docket 129

Tentative Ruling:

Tentative for 4/29/21:
See #17.

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

Plaintiff(s):

Richard A Marshack in his capacity

Represented By
D Edward Hays
Tinho Mang

Trustee(s):

Richard A Marshack (TR)

Represented By

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

Tuesday, May 4, 2021

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, May 4, 2021

Hearing Room 5B

10:30 AM

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

Chapter 11

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**AJAX MORTGAGE LOAN TRUST 2019-E
Vs.
DEBTORS**

Docket 183

Tentative Ruling:

Tentative for 5/4/21:
Absent stipulated APO grant.

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

Movant(s):

Ajax Mortgage Loan Trust 2019-E,

Represented By
Joshua L Scheer
Reilly D Wilkinson

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

Tuesday, May 4, 2021

Hearing Room 5B

10:30 AM

8:18-13799 Margoth Angelica Esquivel

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 4-06-21)**

**WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR**

Docket 46

Tentative Ruling:

Tentative for 5/4/21:
Status?

Appearance: optional

Tentative for 4/6/21:
Grant. Appearance: optional

Tentative for 3/2/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Margoth Angelica Esquivel

Represented By
LeRoy Roberson

Movant(s):

Wilmington Savings Fund Society,

Represented By
Kirsten Martinez

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

Tuesday, May 4, 2021

Hearing Room 5B

10:30 AM

CONT... Margoth Angelica Esquivel

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, May 4, 2021

Hearing Room 5B

11:00 AM

8:14-15355 Tomas Popovic

Chapter 7

#3.00 Order To Show Cause Re: Contempt Why The Royalty Network, Inc. Should Not Be Held In Contempt For Violating The Discharge Injunction Of 11 USC Section 524

Docket 26

Tentative Ruling:

Tentative for 5/4/21:
Assess appropriate sanctions.

Party Information

Debtor(s):

Tomas Popovic

Represented By
Bret D Lewis

Trustee(s):

John M Wolfe (TR)

Pro Se

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

Tuesday, May 4, 2021

Hearing Room 5B

11:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

#4.00 Order To Show Cause Why Chapter 7 Debtor Jee Hyuk Shin Should Not Be Held In Contempt Of The Court's Order On Chapter 7 Trustee Richard Marshack's Motion To Compel

Docket 0

Tentative Ruling:

Tentative for 5/4/21:
Status. Suggested coercive steps?

Party Information

Debtor(s):

Jee Hyuk Shin

Pro Se

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, May 4, 2021

Hearing Room 5B

11:00 AM

8:19-13661 Matthew Lee Lavigne and Mary Jennifer Lavigne

Chapter 7

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

KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

FEES: \$1,232.05

EXPENSES: \$236.85

Docket 0

Tentative Ruling:

Tentative for 5/4/21:
Allow as prayed. Appearance: optional

Party Information

Debtor(s):

Matthew Lee Lavigne

Represented By
Richard G Heston

Joint Debtor(s):

Mary Jennifer Lavigne

Represented By
Richard G Heston

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Wednesday, May 5, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1608313386>

ZoomGov meeting number: 160 831 3386

Password: 236450

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, May 5, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 5, 2021

Hearing Room 5B

10:00 AM

8:11-24750 Kenny G Enterprises, LLC

Chapter 7

#1.00 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 4-06-21)

Docket 457

Party Information

Debtor(s):

Kenny G Enterprises, LLC

Represented By
Robert P Goe
Jeffrey S Souders

Trustee(s):

Thomas H Casey (TR)

Represented By
Kathleen J McCarthy
Thomas H Casey
Steve Burnell

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

Wednesday, May 5, 2021

Hearing Room 5B

10:00 AM

8:19-13493 Ralph Maxwell Burnett, III and Shelley Lynn Burnett

Chapter 11

**#2.00 Post-Confirmation Status Conference Of Chapter 11 Plan
(set from 3-26-20 confirmation hearing)
(re-scheduled from 12-16-20 per court)
(cont'd from 12-15-20)**

Docket 38

***** VACATED *** REASON: CONTINUED TO 5-12-21 AT 10:00 A.M.
PER COURT'S OWN MOTION**

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, May 5, 2021

Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

#3.00 U.S. Trustee's Motion To Dismiss Case Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C.§1112(b)
(cont'd from 3-10-21)

Docket 102

***** VACATED *** REASON: CONTINUED TO 5-12-21 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Vicki L Schenum

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

Wednesday, May 5, 2021

Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

#4.00 Motion For Order Approving Debtor's Disclosure Statement And Setting Plan Solicitation And Confirmation Procedures And Deadlines

Docket 140

***** VACATED *** REASON: CONTINUED TO 5-12-21 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Christopher C Barsness

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

Thursday, May 6, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1606858115>

ZoomGov meeting number: 160 685 8115

Password: 464597

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, May 6, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, May 6, 2021

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 (cont'd from 3-11-21 per another summons issued on 2-18-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-13-21 AT 10:00 A.M.
PER COURT'S OWN MTN**

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

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

Thursday, May 6, 2021

Hearing Room 5B

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

Thursday, May 6, 2021

Hearing Room 5B

10:00 AM

8:20-12871 Torrin Myles Rossi

Chapter 7

Adv#: 8:21-01004 Tang v. Rossi

#2.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523 (a)(2)(A), (a)(4), and (a)(6) (cont'd from 4-08-21 per order approving stip. to cont status conference entered 3-26-21)

Docket 1

*** VACATED *** REASON: CONTINUED TO 5-13-21 AT 10:00 A.M.
PER COURT'S OWN MTN

Party Information

Debtor(s):

Torrin Myles Rossi

Represented By
Ronald A Gorrie

Defendant(s):

Torrin Myles Rossi

Pro Se

Plaintiff(s):

Ke Tang

Represented By
Claudia Coleman
D Edward Hays

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Thursday, May 6, 2021

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

#3.00 PRE-TRIAL 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 **(set from s/c hrg held on 7-23-20)
(cont'd from 2-25-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-13-21 AT 10:00 A.M.
PER COURT'S OWN MTN**

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
NEXGEN Capital Limited Liability	Pro Se
Queen Funding LLC, a New Jersey	Pro Se

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

Thursday, May 6, 2021

Hearing Room 5B

10:00 AM

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 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, May 6, 2021

Hearing Room 5B

11:00 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 3-25-21 per order approving stip. to cont. pretrial conf & deadline to file pretrial motions entered 3-17-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-13-21 AT 11:00 A.M.
PER COURT'S OWN MOTION**

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, May 6, 2021

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

#5.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 2-04-20 per order approving stip. to cont. s/c and mtn to dsm entered 1-21-21)

Docket 1

*** VACATED *** REASON: CONTINUED TO 5-13-21 AT 11:00 A.M.
PER COURT ORDER MOTION

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, May 6, 2021

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

#6.00 Motion to Dismiss Adversary Proceeding 12(b)(6)
(con't from 2-04-20 per order approving stip. to cont. s/c and mtn to dismiss entered 1-21-21)

Docket 3

***** VACATED *** REASON: CONTINUED TO 5-13-21 AT 11:00 A.M.
PER COURT'S OWN MOTION**

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**

Tuesday, May 11, 2021

Hearing Room 5B

10:30 AM
8:00-00000

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/1618942929>

ZoomGov meeting number: 161 894 2929

Password: 497387

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**

Tuesday, May 11, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, May 11, 2021

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, May 11, 2021

Hearing Room 5B

10:30 AM

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

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**UBS FINANCIAL SERVICES, INC.
Vs.
DEBTORS**

Docket 232

Tentative Ruling:

Tentative for 5/11/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Norman Weaver Jr.

Represented By
Michael F Chekian

Joint Debtor(s):

Lori C. Weaver

Represented By
Michael F Chekian

Trustee(s):

Richard A Marshack (TR)

Represented By
Chad V Haes
D Edward Hays

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

Tuesday, May 11, 2021

Hearing Room 5B

10:30 AM

8:21-10669 Mary Espiritu

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA LEASE TRUST
Vs.
DEBTOR**

Docket 8

Tentative Ruling:

Tentative for 5/11/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Mary Espiritu

Represented By
Michael D Franco

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, May 11, 2021

Hearing Room 5B

10:30 AM

8:16-12695 Adrienne Y. Turner

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 89

Tentative Ruling:

Tentative for 5/11/21:
Grant absent stipulated APO.

Party Information

Debtor(s):

Adrienne Y. Turner

Represented By
Joseph A Weber

Movant(s):

Wells Fargo Bank, National

Represented By
Eric P Enciso
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, May 11, 2021

Hearing Room 5B

10:30 AM

8:11-13618 James E Tuley and Susan B Tuley

Chapter 11

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**WELLS FARGO BANK, N.A.
Vs.
DEBTORS**

Docket 179

Tentative Ruling:

Tentative for 5/11/21:
No service on committee, UST or twenty largest creditors. Continue as to those parties.

Appearance: optional

Party Information

Debtor(s):

James E Tuley

Represented By
Bryan L Ngo

Joint Debtor(s):

Susan B Tuley

Represented By
Bryan L Ngo

Movant(s):

Wells Fargo Bank, N.A., as Trustee

Represented By
Theron S Covey
Sean C Ferry

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

Tuesday, May 11, 2021

Hearing Room 5B

10:30 AM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY

**CTF ASSET MANAGEMENT, LLC
Vs.
DEBTORS**

Docket 82

Tentative Ruling:

Tentative for 5/11/21:
Grant unless current or stipulated APO.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

CTF Asset Management, LLC, its

Represented By
Reilly D Wilkinson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, May 11, 2021

Hearing Room 5B

10:30 AM

8:20-10960 Chad J. Latham

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY

**WELLS FARGO BANK, NA
Vs
DEBTOR**

Docket 41

Tentative Ruling:

Tentative for 5/11/21:
Deny if current status verified.

Appearance: optional

Party Information

Debtor(s):

Chad J. Latham

Represented By
Joseph A Weber
Fritz J Firman

Movant(s):

Wells Fargo 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**

Tuesday, May 11, 2021

Hearing Room 5B

10:30 AM

8:20-12856 1875 N Palm Canyon Partners II, LLC

Chapter 7

#7.00 Motion for relief from the automatic stay REAL PROPERTY

**CITY OF PALM SPRINGS
Vs
DEBTOR**

Docket 47

Tentative Ruling:

Tentative for 5/11/21:
Grant. See #10 @ 11:00 a.m.

Party Information

Debtor(s):

1875 N Palm Canyon Partners II,

Represented By
Edmond Richard McGuire
Marisol A Nagata

Movant(s):

City of Palm Springs

Represented By
Brian W Byun
Caroline Djang

Trustee(s):

Weneta M.A. 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, May 11, 2021

Hearing Room 5B

10:30 AM

8:21-10637 Ace-Tech Construction

Chapter 7

#8.00 Motion for relief from the automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 4-13-21)

**YOU SUK MIN AND AERAHN PARK
Vs
DEBTOR**

Docket 5

Tentative Ruling:

Tentative for 5/11/21:
Why was this not served upon the address listed for debtor in this case?

Appearance: optional

Tentative for 4/13/21:
Under LBRs notice is required to be given to debtor (not just to counsel), and that does not appear to have been done. Continue to provide notice which can be on opportunity to request hearing. Appearance: optional

Party Information

Debtor(s):

Ace-Tech Construction

Represented By
Young K Chang

Movant(s):

Edward Ip

Represented By
Chi L Ip

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

Tuesday, May 11, 2021

Hearing Room 5B

10:30 AM

CONT... Ace-Tech Construction

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, May 11, 2021

Hearing Room 5B

10:30 AM

8:21-10637 Ace-Tech Construction

Chapter 7

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

**YOU SUK MIN & AERAHN PARK
Vs.
DEBTOR**

Docket 11

Tentative Ruling:

Tentative for 5/11/21:
See #8.

Party Information

Debtor(s):

Ace-Tech Construction

Represented By
Young K Chang

Movant(s):

You Suk Min and Aerahn Park

Represented By
Edward C Ip
Chi L Ip

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Tuesday, May 11, 2021

Hearing Room 5B

11:00 AM

8:20-12856 1875 N Palm Canyon Partners II, LLC

Chapter 7

#10.00 Motion For Authority To Abandon Estate's Interest In Real Property Located At
1875 N Palm Canyon Drive, Palm Springs, CA 92262

Docket 50

Tentative Ruling:

Tentative for 5/11/21:
Grant.

Party Information

Debtor(s):

1875 N Palm Canyon Partners II,

Represented By
Edmond Richard McGuire
Marisol A Nagata

Trustee(s):

Weneta M.A. 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, May 11, 2021

Hearing Room 5B

11:00 AM

8:17-12900 Harv Wyman and Kim M. Wyman

Chapter 7

#11.00 Motion to Approve Compromise And Sale of Property of the Estate

Docket 46

Tentative Ruling:

Tentative for 5/11/21:
Grant. Appearance optional

Party Information

Debtor(s):

Harv Wyman

Represented By
Thomas J Polis

Joint Debtor(s):

Kim M. Wyman

Represented By
Thomas J Polis

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 12, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1605327672>

ZoomGov meeting number: 160 532 7672

Password: 052741

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, May 12, 2021

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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- 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, May 12, 2021

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, May 12, 2021

Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

**#1.00 U.S. Trustee's Motion To Dismiss Case Or Convert Case To One Under Chapter 7 Pursuant To 11 U.S.C. §1112(b)
(cont'd from 5-05-21 per court's own mtn)**

Docket 102

Tentative Ruling:

Tentative for 5/12/21:
Same tentative.

Tentative for 3/10/21:
Appoint an 11 Trustee.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Vicki L Schenum

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

Wednesday, May 12, 2021

Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

**#2.00 Motion For Order Approving Debtor's Disclosure Statement And Setting Plan Solicitation And Confirmation Procedures And Deadlines
(cont'd from 5-05-21 per court's own mtn}**

Docket 140

Tentative Ruling:

Tentative for 5/12/21:
See #1.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Christopher C Barsness

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

Wednesday, May 12, 2021

Hearing Room 5B

10:00 AM

8:21-10863 Nalu's Group, Inc.

Chapter 11

#3.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual. Inc.

Docket 1

Tentative Ruling:

Tentative for 5/12/21:

The court has reviewed the reports. No issues noted. When will we see a plan?

Party Information

Debtor(s):

Nalu's Group, Inc.

Represented By
Michael Jones

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**

Wednesday, May 12, 2021

Hearing Room 5B

10:00 AM

8:19-13493 **Ralph Maxwell Burnett, III and Shelley Lynn Burnett**

Chapter 11

#4.00 Post-Confirmation Status Conference Of Chapter 11 Plan
(set from 3-26-20 confirmation hearing)
(re-scheduled from 12-16-20 per court)
(cont'd from 5-05-21 per court own's motion)

Docket 38

Tentative Ruling:

Tentative for 5/12/21:

When can we expect a motion to administratively close? Absent that date, continue for another post confirmation status report in about 180 days.

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

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

Wednesday, May 12, 2021

Hearing Room 5B

10:00 AM

CONT... Ralph Maxwell Burnett, III and Shelley Lynn Burnett Chapter 11

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

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**

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1602350626>

ZoomGov meeting number: 160 235 0626

Password: 764969

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, May 13, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
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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**

Thursday, May 13, 2021

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**

Thursday, May 13, 2021

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 1-07-21)

Docket 1

Tentative Ruling:

Tentative for 5/13/21:
Continue to coincide with hearing on summary judgment July 29, 2021.

Appearance: optional

Tentative for 1/7/21:
See #7

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?

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

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.

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

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

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, May 13, 2021

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
**(cont'd from 3-11-21 per another summons issued on 2-18-21)
(rescheduled from 5-6-21 per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-29-21 AT 10:00 A.M.
PER ALIAS SUMMONS ISSUED ON 5-11-21**

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?

Party Information

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

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

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

CONT...

Zia Shlaimoun

Sunjina Kaur Anand Ahuja

Chapter 7

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

Thursday, May 13, 2021

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.

**#3.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 2-11-21 per order appr. stip to cont. s/c entered 2-10-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-12-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO EXTEND DEADLINE TO
RESPOND TO COMPLAINT AND CONTINUING STATUS
CONFERENCE ENTERED 4-12-21**

Tentative Ruling:

Tentative for 2/11/21:
A stipulation to continue?

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, May 13, 2021

Hearing Room 5B

10:00 AM

8:20-12871 Torrin Myles Rossi

Chapter 7

Adv#: 8:21-01004 Tang v. Rossi

**#4.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523 (a)(2)(A), (a)(4), and (a)(6)
(cont'd from 5-06-21 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for 5/13/21:

Case is referred to mediation. Plaintiff to submit an order appointing selected mediator within ten days. One day of mediation to occur before August 13, 2021. Continued status hearing August 26, 2021 at 10:00 a.m., without prejudice to plaintiff's expected motion for summary judgement which may be self-calendared.

Party Information

Debtor(s):

Torrin Myles Rossi

Represented By
Ronald A Gorrie

Defendant(s):

Torrin Myles Rossi

Pro Se

Plaintiff(s):

Ke Tang

Represented By
Claudia Coleman
D Edward Hays

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:21-01011 Vibe Micro, Inc. v. Remares Global, LLC

**#5.00 STATUS CONFERENCE RE: Complaint For: (1) Equitable Subordination;
(2) Recharacterization; And (3) Objection To Claim**

Docket 1

Tentative Ruling:

Tentative for 5/13/21:
Continue to May 27, 2021 @ 11:00 a.m. to coincide with hearing on motion
to dismiss.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Remares Global, LLC

Pro Se

Plaintiff(s):

Vibe Micro, Inc.

Represented By
Aaron J Malo
Jacqueline A Gottlieb

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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

Thursday, May 13, 2021

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 1-07-21)

Docket 0

Tentative Ruling:

Tentative for 5/13/21:

Continue to coincide with summary judgment hearing on July 29 @ 2:00 p.m..

Tentative for 1/7/21:

See #7

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?

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

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.

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

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

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, May 13, 2021

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

#7.00 PRE-TRIAL 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 **(set from s/c hrg held on 7-23-20)
(cont'd from 5-06-21 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for 5/13/21:

Has the matter been resolved? Any further proceedings expected?

Tentative for 2/25/21:

Status? Some parties have been dismissed yet some remain. Why no status report? Appearance: required

Tentative for 7/23/20:

Same schedule as #10.

Party Information

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

Thursday, May 13, 2021

Hearing Room 5B

10:00 AM

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

Thursday, May 13, 2021

Hearing Room 5B

11:00 AM

8:18-10582 David R. Garcia

Chapter 7

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

**#8.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(con't from 5-06-21 per court's own motion)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-15-2021 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE PRETRIAL
CONFERENCE ENTERED 5-10-21**

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
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Santa Ana
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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, May 13, 2021

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC et al

#9.00 STATUS CONFERENCE RE: First Amended Complaint For: (1) Declaratory Relief; (2) Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550; (3) Unjust Enrichment / Disgorgement; (4) Avoidance and Preservation of Claims Pursuant to 11 U.S.C. §§ 502, 506, 544, and 510(c); (5) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548 and 550; (6) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544, 548 and 550; (7) Usury; (8) Injunction; (9) Determination of Liens Pursuant to 11 U.S.C. §§ 502, 506 and 551; (10) Unconscionability; (11) Negligence Per Se - Violation of California Finance Lending Law; (12) Violation of California Business and Professions Code Section 17200; and (13) Fraud **(set from another summon issued on 10-16-20 per amended complaint) (cont'd from 3-11-21 per order approving stip between plaintiff and defendants capcall, llc, corefund capital, llc gma usa, llc, and yes funding services, llc to cont. status conference and hearing on motion to dismiss entered 3-08-21)**

Docket 13

***** VACATED *** REASON: CONTINUED TO 7-15-21 AT 11:00 A.M. PER ORDER APPROVING SECOND STIPULATION BETWEEN PLAINTIFF AND DEFENDANTS CAPCALL, LLC, COREFUND CAPITAL, LLC, GMA USA, LLC AND YES FUNDING SERVICES, LLC TO CONTINUE STATUS CONFERENCE & HEARING ON MTN TO DISMISS ENTERED 4-30-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
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Santa Ana
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11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

Shanna M. Kaminski
Timothy W Evanston

Corefund Capital, LLC

Pro Se

GMA USA, LLC

Pro Se

YES Funding Services, LLC

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe
Rafael R Garcia-Salgado

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 13, 2021

Hearing Room 5B

11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC et al

#10.00 Motion To Dismiss First Amended Complaint Pursuant To Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6)
(cont'd from 3-11-21 per order approving stip between plaintiff and defendants capcall,llc, corefund captial, llc, gma usa, llc and yes funding services, llc to cont. hrg on mtn to dismiss entered 3-08-21)

Docket 20

***** VACATED *** REASON: CONTINUED TO 7-15-21 AT 11:00 A.M.
PER ORDER APPROVING SECOND STPULATION BETWEEN
PLAINTIFF AND DEFENDANTS CAPCALL, LLC, COREFUND
CAPITAL, LLC, GMA USA, LLC AND YES FUNDING SERVICES, LLC
TO CONTINUE STATUS CONFERENCE & HEARING ON MTN TO
DISMISS ENTERED 4-30-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski
Timothy W Evanston

Corefund Capital, LLC

Represented By
Lei Lei Wang Ekvall

GMA USA, LLC

Represented By
Lei Lei Wang Ekvall

YES Funding Services, LLC

Represented By
Lei Lei Wang Ekvall

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

Thursday, May 13, 2021

Hearing Room 5B

11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe
Rafael R Garcia-Salgado

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 13, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

#11.00 Motion By Plaintiff To Strike Defendant's Demand For Jury Trial And Statement Of Non-Consent For A Jury Trial Conducted By The Bankruptcy Court

Docket 118

Tentative Ruling:

Tentative for 5/13/21:

This is the chapter 7 trustee, Karen Sue Naylor's ("Trustee") Motion to strike defendant, Scott Gladstone's ("Defendant") demand for jury trial and statement of non-consent for a jury trial conducted by the bankruptcy court. Defendant opposes the motion.

1. Factual Background

The debtor, Anna's Linens, Inc., filed a chapter 11 bankruptcy petition on June 14, 2015. The case was converted to chapter 7 by order entered on March 30, 2016. [Bankr. Dkt. No. 1455]. Defendant filed his Claims (Claim Nos. 1199 and 1200) for unpaid vacation, deferred compensation and expenses in the Debtor's bankruptcy case on or about September 29, 2015. Trustee filed a complaint against the Defendant on June 13, 2017, which initiated the instant adversary proceeding [Adv. Dkt. No. 1]. Defendant argues that in the original complaint, Trustee alleged that this adversary proceeding is a "non-core proceeding pursuant to 28 U.S.C. § 157(b)(2)(C)." The adversary complaint was amended on or about December 10, 2020 [Adv. Proc. No. 97]. By the complaint and amended complaint, the Trustee seeks to recover damages from the Defendant for his alleged post-petition breaches in his capacity as the President and Chief Executive Officer of the Debtor. Specifically, the Trustee's amended complaint alleges causes of action for: (1) breach of fiduciary duty and duty of care; and (2) negligence. Both Claims for Relief are based on allegations that Defendant failed to cause Debtor to

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CONT... Anna's Linens, Inc.

Chapter 7

give WARN Act notices in connection with certain layoffs by Debtor.

On March 11, 2021, the Defendant filed an answer to the amended complaint, including a jury trial demand [Adv. Dkt. No. 112], and thereafter filed his Demand for Jury Trial and Statement of Non-Consent to a Jury Trial Conducted by the Bankruptcy Court (the "Jury Demand") [Adv. Dkt. No. 113].

2. Legal Authority

In determining whether a party is entitled to a trial by jury under the Seventh Amendment, a court must first compare the statutory action to 18th century actions brought in the courts of England prior to the merger of the courts of law and equity, and second, examine the remedy sought and determine whether it is legal or equitable in nature. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989). The second question is more important than the first. *Id.* "If, on balance, these two factors indicate that a party is entitled to a jury trial under the Seventh Amendment, we must decide whether Congress may assign and has assigned resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as factfinder." *Id.* "[B]y filing a claim against a bankruptcy estate the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (internal citations omitted). "If the creditor is met, in turn, with a preference action from the trustee, that action becomes part of the claims-allowance process which is triable only in equity." *Id.* "In other words, the creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction." *Id.* As such, there is no Seventh Amendment right to a jury trial. *Id.* at 44-45. If a party does not submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. *Id.* at 45. In those circumstances the preference

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defendant is entitled to a jury trial. *Id.*

"Core proceedings include, but are not limited to[...] counterclaims by the estate against persons filing claims against the estate[.]" 28 U.S.C. 157(b)(2)(C). A bankruptcy court lacks the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim. *Stern v. Marshall*, 564 U.S. 462, 503 (2011).

3. Is Defendant Entitled to A Jury Trial?

Both parties agree that Defendant filed claims against the estate on October 1, 2015. As noted above, Defendant filed claim #1199 in the amount of \$474,961.47 for unpaid accrued vacation and employee deferred compensation benefit plan; and claim #1200 in the amount of \$339.07 for unreimbursed business expenses. From this, under the framework provided by the Supreme Court in *Granfinanciera* and *Langenkamp*, Defendant submitted to this court's equitable jurisdiction when he filed his proofs of claim. Defendant argues that those two cases are distinguishable because Trustee's counterclaim is not to avoid a fraudulent conveyance (as in *Granfinanciera*) nor to avoid a preferential transfer (as in *Langenkamp*), so those two authorities are distinguishable. In other words, Defendant argues that those cases should be interpreted very narrowly. The real problem is that deciding the constitutional limits of jurisdiction of the bankruptcy courts has gotten much more complicated since *Granfinanciera* and *Langenkamp*.

Instead, Defendant argues, citing *Stern v. Marshall*, 564 U.S. at 503, that bankruptcy courts lack authority under Article III to enter final judgment on state law "counterclaims" that are not resolved in the process of ruling on a defendant's proof of claim. Although it is true, as Trustee points out, that *Stern* was ultimately not about entitlement to a jury trial, that does not mean *Stern* is irrelevant. In fact, the *Stern* court extensively discussed the portions of *Granfinanciera* and *Langenkamp* that are relevant to our case. For

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example, the *Stern* court explained that in *Granfinanciera*, the court noted "that a proceeding's 'core' status alone authorizes a bankruptcy judge, as a statutory matter, to enter final judgment in the proceeding. See, e.g., *Granfinanciera, S. A. v. Nordberg*, 492 U.S. 33, 50 (1989) (explaining that Congress had designated certain actions [including fraudulent conveyance actions] as "core proceedings," which bankruptcy judges may adjudicate and in which they may issue final judgments, if a district court has referred the matter to them' (citations omitted))." *Stern*, 564 U.S. at 475. The *Stern* court also noted that the trustee in *Langenkamp*, unlike here, was pursuing a preferential transfer counterclaim, a right created by the federal bankruptcy code (11 U.S.C. §547(b)(1)) and not a state common law or statutory claim. The *Stern* court noted that the ensuing preference action by the trustee becomes integral to the restructuring of the debtor-creditor relationship. *Langenkamp*, 498 U.S. at 44. The *Stern* court also discussed another seminal opinion, *Katchen v. Landy*, 382 U.S. 323 (1966) where the court "permitted a bankruptcy referee to exercise jurisdiction over a trustee's voidable preference claim against a creditor only where there was no question that the referee was required to decide whether there had been a voidable preference in determining whether and to what extent to allow the creditor's claim." *Stern* 564 U.S. at 466 citing *Katchen v. Landy*, 382 U.S. at 333.

Trustee would have the court deny Defendant's demand for a jury trial based almost entirely on the fact that he filed proofs of claim against the estate. However, as the court in *Stern* noted, this court must determine the degree to which the proofs of claim and the counterclaims are intertwined. There is little to no overlap aside from the fact that both spring from Defendant's employment with Debtor. Yes, it is true that Defendant did not demand a jury trial until recently even though the adversary proceeding was commenced nearly 4 years ago. However, this matter was held in abeyance by stipulation and Defendant filed a timely answer. The court does not see how resolution of the counterclaims will necessarily resolve the issues in the proofs of claim or vice-versa, except for the Trustee's tenuous argument that

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Anna's Linens, Inc.

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an officer derelict in his business duties does not earn vacation or the right to be reimbursed expenses? This is a slender reed upon which to base the weighty decision to deny a jury trial. The counterclaims are not claims created by the bankruptcy code as in *Langenkamp* but are rather state common law or statutory claims concerning WARN Act, breach of fiduciary duty and negligence, and the counterclaims do not belong to a particularized area of law. See *Stern*, at 504, Scalia concurring opinion listing the factors he could glean from the main opinion.

Trustee cites several cases apparently for the proposition courts have applied the waiver of Seventh Amendment rights based on a creditor filing a proof of claim in contexts beyond fraudulent and preferential transfers. However, in those cases, the counterclaims bore consequence for the proofs of claim. For example, Trustee cites *Southern Produce Distributors, Inc. v. Adams*, 616 B.R. 667 (Bankr. E.D. NC 2020), in which the chapter 11 debtor produce distributor initiated an adversary proceeding against several of its suppliers alleging claims for unjust enrichment, turnover of property of the estate, violation of the automatic stay and civil contempt. (*Id.* at 670). The *Southern Produce* defendants had previously filed proofs of claim in the bankruptcy case for produce they had delivered to the debtor. (*Id.* at 669). The defendants requested jury trials. (*Id.* at 670). Citing the Supreme Court's decisions in *Langenkamp* and *Granfinanciera*, the *Southern Produce* bankruptcy court ruled that by filing proofs of claim, the Defendants had waived any Seventh Amendment jury trial rights they may have had. (*Id.* at 672-673). On those facts, *Southern Produce* is not inconsistent with *Stern* because the proofs of claim and the counterclaims have an obvious interconnection and resolution of the proof of claim would greatly assist in the resolution of the counterclaims and vice-versa. The same could be observed in the other case cited by Trustee, *Container Recycling Alliance v. Lassman*, 359 B.R. 358 (D. Mass. 2007), a pre-*Stern* case. The situation is much more tenuous here as Trustee seems to concede by arguing that there is no Ninth Circuit authority requiring Defendant's claims and Trustee's counterclaims be

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CONT... Anna's Linens, Inc.

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related or connected. That may be so, but *Stern* still poses a significant roadblock to the motion. Trustee is not wrong to argue that *Stern* may not be the best guide to follow as that case is, by Justice Scalia's observation, dense and clunky in its analytical framework.

Also, perhaps of some relevance here, the *Stern* court noted that Congress gave bankruptcy courts authority to hear all counterclaims against persons filing claims against the estate as "core" proceedings. See 28 U.S.C. §157(b)(2)(C). It could be argued that, as Congress gave this court clear statutory authority to hear (and decide) Trustee's counterclaim, the counterclaim need not be related or connected. But as the *Stern* court bluntly stated, "[a]lthough we conclude that § 157(b)(2)(C) permits the Bankruptcy Court to enter final judgment on Vickie's counterclaim, Article III of the Constitution does not." *Stern*, 564 U.S. at 482. The *Stern* court explained, "*Granfinanciera's* distinction between actions that seek 'to augment the bankruptcy estate' and those that seek 'a pro rata share of the bankruptcy res,' reaffirms that Congress may not bypass Article III simply because a proceeding may have some bearing on a bankruptcy case; the question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* at 499. As noted above, the court is unclear how adjudicating Defendant's proofs of claim would assist in resolving Trustee's counterclaims and vice-versa and the court rejects Trustee's argument that resolution of one necessarily decides the other. It is also very hard to argue that WARN Act claims and /or common law negligence necessarily stems from the bankruptcy itself, and a generalized effect upon the estate is alone insufficient in the *Stern* analysis.

Thus, although admirably argued, the authorities do not appear to support Trustee's conclusion that by merely filing proofs of claim against the estate, Defendant effectively consented to a waiver of his Seventh Amendment right to a jury trial over Trustee's tenuously related counterclaims brought under state statute or common law. Trustee's cites to *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 28 (2014) to provide some

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additional guidance post-*Stern*. There, the court stated:

"Stern did not, however, decide how bankruptcy or district courts should proceed when a "*Stern* claim" is identified. We hold today that when, under *Stern's* reasoning, the Constitution does not permit a bankruptcy court to enter final judgment on a bankruptcy-related claim, the relevant statute nevertheless permits a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed de novo by the district court."

While this does provide a degree of clarity, it does not really resolve the bigger issue we appear to have, which is Defendant's apparent lack of consent to this court's equitable jurisdiction. Absent such consent, it is likely more appropriate for the counterclaim to be heard in the district court.

To conclude, Trustee's arguments seem much more akin to those found in the dissent in *Stern*. However, the court is obliged to follow the binding precedent of *Stern*. It should probably also be noted that this analytical framework is somewhat inelegant. As Justice Scalia noted in his concurring opinion in *Stern*, "[t]he sheer surfeit of factors that the Court was required to consider in this case should arouse the suspicion that something is seriously amiss with our jurisprudence in this area." *Id.* at 504. Deciding that a litigant has forfeited the right to a jury is a weighty issue which would require more than the Trustee presents here; and as is acknowledged, the Ninth Circuit authority on point is scarce or non-existent. This is not the *Langenkamp* case. The counterclaims appear to be *Stern* claims, statutorily designated as core, but not constitutionally permissible for this court to enter final judgment. If this court cannot enter a final order on the counterclaims, it then follows, as night follows day, that empaneling a jury would serve little or no real purpose in the bankruptcy court, but such would likely be appropriate in the district court. Thus, the court does not find sufficient ground to grant the motion. There are practical and logistical issues also raised which will, in the fullness of time, require further attention. It may develop that further

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CONT... Anna's Linens, Inc.

Chapter 7

consideration about transfer to the District Court for trial will be necessary.

Deny

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):

Scott Gladstone

Represented By
Kenneth E Johnson
Eric J Fromme
Christopher J Harney

Plaintiff(s):

Karen Sue Naylor

Represented By
Nanette D Sanders

Trustee(s):

Karen S Naylor (TR)

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

**United States Bankruptcy Court
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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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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 13, 2021

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 11

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#12.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 5-06-21 per court's own mtn)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-12-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 4-13-21**

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
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Thursday, May 13, 2021

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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

**#13.00 Motion to Dismiss Adversary Proceeding 12(b)(6)
(con't from 5-06-21 per court's own mtn)**

Docket 3

***** VACATED *** REASON: CONTINUED TO 8-12-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 4-13-21**

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**

Tuesday, May 18, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1603509044>

ZoomGov meeting number: 160 350 9044

Password: 185124

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

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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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Tuesday, May 18, 2021

Hearing Room 5B

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CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, May 18, 2021

Hearing Room 5B

10:00 AM

8:21-11076 Leticia Nedeau

Chapter 13

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

Docket 12

Tentative Ruling:

Tentative for 5/18/21:
Grant. Appearance: optional.

Party Information

Debtor(s):

Leticia Nedeau

Represented By
Trang Phuong Nguyen

Movant(s):

Leticia Nedeau

Represented By
Trang Phuong Nguyen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, May 19, 2021

Hearing Room 5B

1:30 PM
8:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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Password: 106937

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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
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1:30 PM

8:20-12166 Stephen F. Sturm

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)**

Docket 2

Tentative Ruling:

Tentative for 5/19/21:

It would seem a further continuance is in order in view of Mr. Cook's illness. How long should the confirmation be postponed? What is the issue about debtor's counsel holding the mortgage payments?

Tentative for 4/14/21:

Continue to May 19, 2021 @ 1:30PM to accommodate mediation.

Tentative for 1/20/21:

See #27. There remains a fundamental, unanswered question. Does Cook have a secured claim and do the promised payments equal that interest in present value terms. The parties should consider mediation to resolve this. Continue.

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.

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1:30 PM

CONT... Stephen F. Sturm

Chapter 13

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

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, May 19, 2021

Hearing Room 5B

1:30 PM

8:21-10164 Rhonda Hall Alter

Chapter 13

**#2.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)**

Docket 15

Tentative Ruling:

Tentative for 4/14/21:

Where do we stand? Are we focused now on the First Amended Plan filed April 8? Absent compelling reason, it would seem a continuance is indicated to allow timely responses.

Tentative for 3/17/21:

How does debtor intend to deal with US Bank's objection?

Party Information

Debtor(s):

Rhonda Hall Alter

Represented By
Hasmik Jasmine Papian

Movant(s):

Rhonda Hall Alter

Represented By
Hasmik Jasmine Papian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, May 19, 2021

Hearing Room 5B

1:30 PM

8:21-10184 Brian Kelly

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)**

Docket 11

Tentative Ruling:

Tentative for 5/19/21:
The Trustee's points must be addressed.

Tentative for 4/14/21:
Debtor must address trustee's points.

Party Information

Debtor(s):

Brian Kelly

Represented By
Richard L. Sturdevant

Movant(s):

Brian Kelly

Represented By
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, May 19, 2021

Hearing Room

5b

1:30 PM

8:21-10201 Luther E Secrest

Chapter 13

#4.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)

Docket 15

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
DEBTOR'S REQUEST FOR VOLUNTARY DISMISSAL FILED 5-11-21

Tentative Ruling:

Tentative for 4/14/21:

Debtor must respond to the multiple objections and concerns.

Party Information

Debtor(s):

Luther E Secrest

Represented By
Charles W Daff

Movant(s):

Luther E Secrest

Represented By
Charles W Daff

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Wednesday, May 19, 2021

Hearing Room 5B

1:30 PM

8:21-10318 Randy Lee Blassingame

Chapter 13

**#5.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)**

Docket 2

Tentative Ruling:

Tentative for 4/14/21:
The trustee's points must be answered.

Party Information

Debtor(s):

Randy Lee Blassingame

Represented By
D Justin Harelik

Movant(s):

Randy Lee Blassingame

Represented By
D Justin Harelik

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

8:21-10343 Jeffrey A. Dailey and Tina M. Dailey

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)**

Docket 14

Tentative Ruling:

Tentative for 5/19/21:

How does the plan deal with IRS claim in order to effect a feasible plan?

Party Information

Debtor(s):

Jeffrey A. Dailey

Represented By
Christopher J Langley

Joint Debtor(s):

Tina M. Dailey

Represented By
Christopher J Langley

Movant(s):

Jeffrey A. Dailey

Represented By
Christopher J Langley

Tina M. Dailey

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

1:30 PM

8:21-10352 Rene Charles Paiz and Teresa Ann Paiz

Chapter 13

**#7.00 Confirmation Of Amended Chapter 13 Plan
(cont'd from 4-14-21)**

Docket 17

Tentative Ruling:

Tentative for 5/19/21:

Is debtor prepared to meet the points raised in trustee's objection: missing declaration re secured payments, collateral valuation, missing returns, adjusted payments in view of return of collateral to Exeter?

Party Information

Debtor(s):

Rene Charles Paiz

Represented By
Heather J Canning

Joint Debtor(s):

Teresa Ann Paiz

Represented By
Heather J Canning

Movant(s):

Rene Charles Paiz

Represented By
Heather J Canning

Teresa Ann Paiz

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

1:30 PM

8:21-10433 Ferdinand Syegco De Dios and Ma Abigail Ama De Dios

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Ferdinand Syegco De Dios

Represented By
Christopher J Langley

Joint Debtor(s):

Ma Abigail Ama De Dios

Represented By
Christopher J Langley

Movant(s):

Ferdinand Syegco De Dios

Represented By
Christopher J Langley

Ma Abigail Ama De Dios

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, May 19, 2021

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1:30 PM

8:21-10585 Cynthia Olivia Bell

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Cynthia Olivia Bell

Represented By
Raymond J Seo

Movant(s):

Cynthia Olivia Bell

Represented By
Raymond J Seo
Raymond J Seo
Raymond J Seo

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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1:30 PM

8:21-10697 Beth E. Mackey

Chapter 13

#10.00 Confirmation Of Chapter 13 Plan

Docket 6

Tentative Ruling:

Tentative for 5/19/21:
Mellon bank objection? Trustee's point about admin claims?

Party Information

Debtor(s):

Beth E. Mackey

Represented By
Thomas J Polis

Movant(s):

Beth E. Mackey

Represented By
Thomas J Polis
Thomas J Polis

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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1:30 PM

8:21-10709 Anitra Kay Kyees

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
NOTICE OF DISMISSAL ARISING FROM DEBTOR'S REQUEST FOR
VOLUNTARY DISMISSAL ON 4-28-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anitra Kay Kyees

Represented By
Joshua L Sternberg

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:30 PM

8:21-10726 Maria Perez De Reynoso

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 5

Tentative Ruling:

Tentative for 5/19/21:
Trustee's points must be addressed.

Party Information

Debtor(s):

Maria Perez De Reynoso

Represented By
Tyson Takeuchi

Movant(s):

Maria Perez De Reynoso

Represented By
Tyson Takeuchi

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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1:30 PM

8:21-10755 Jennifer Wu

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

Tentative for 5/19/21:

How will debtor address the serious issues and missing documents raised by the trustee?

Party Information

Debtor(s):

Jennifer Wu

Represented By
Christopher C Barsness

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

1:30 PM

8:21-10762 Alejandro Jose Godinez

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: OFF CALENDAR - ORDER AND NOTICE
OF DISMISSAL FOR FAILURE TO FILE SCHEDULES, STATEMENTS
AND/OR PLAN ENTERED 4-12-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alejandro Jose Godinez

Pro Se

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

8:15-13438 Salvador Manuel Robledo

Chapter 13

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

Docket 135

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 5-04-21

Tentative Ruling:

- NONE LISTED -

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
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Wednesday, May 19, 2021

Hearing Room 5B

3:00 PM

8:16-11718 Santiago Alvarez

Chapter 13

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

Docket 79

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 5-04-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Santiago Alvarez

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

**#17.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision
(cont'd from 4-14-21)**

Docket 59

Tentative Ruling:

Tentative for 5/19/21:
See #17.1

Tentative for 4/14/21:
Is this moot depending on result of modification motion filed March 9?

Tentative for 3/17/21:
Grant unless feasibility issue cured or modification motion on file.

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

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

Docket 68

Tentative Ruling:

Tentative for 5/19/21:

Several serious issues are raised as mentioned by both the Trustee and Ascentium. Why should the debtors be excused from turning over tax refunds when they do not propose 100% payment?

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:17-12477 Geraldine Arguelles

Chapter 13

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

Docket 142

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 5-11-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

**#19.00 Trustee's Motion to Dismiss Case failure to make plan payments
(cont'd from 4-14-21)**

Docket 52

Tentative Ruling:

Tentative for 5/19/21:
See #20

Tentative for 4/14/21:
See #18.

Tentative for 3/17/21:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

**#20.00 Motion to Modify Plan And/Or Suspend Plan Payments
(cont'd from 4-14-21)**

Docket 56

Tentative Ruling:

Tentative for 5/19/21:
Debtors must address Trustee's points.

Tentative for 4/14/21:
In view of trustee's concerns, the court needs to know whether the effort to modify will be prosecuted in which case responses to trustee's points are required.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

3:00 PM

8:18-10808 Jack Dennis Mitchell and Kathleen Marie Mitchell

Chapter 13

**#21.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments
(cont'd from 4-14-21)**

Docket 64

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION TO DISMISS FILED 5-11-21**

Tentative Ruling:

Tentative for 4/14/21:

Grant absent current status or modification motion on file.

Party Information

Debtor(s):

Jack Dennis Mitchell

Represented By
Nicholas M Wajda

Joint Debtor(s):

Kathleen Marie Mitchell

Represented By
Nicholas M Wajda

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:18-11266 Valerie Jill Campbell

Chapter 13

#22.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 4-14-21)

Docket 38

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL MOTION TO DISMISS FILED 5-11-21**

Tentative Ruling:

Tentative for 4/14/21:
Continue pending processing of modification motion.

Party Information

Debtor(s):

Valerie Jill Campbell

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

3:00 PM

8:18-12488 Kathleen Ohara

Chapter 13

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

Docket 167

Tentative Ruling:

Tentative for 5/19/21:
Grant unless motion to modify on file.

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
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Wednesday, May 19, 2021

Hearing Room 5B

3:00 PM

8:18-13236 Chad James Carter and Terah Rose Carter

Chapter 13

#23.00 Trustee's Motion To Dismiss Chapter 13 Case

Docket 112

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL RE: MOTION TO DISMISS FILED 5-11-21**

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
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Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

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

Docket 76

Tentative Ruling:

Tentative for 5/19/21:

In view of debtor's failure to support her motion or respond to comments despite continuances (as described by Trustee) deny.

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
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Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

**#25.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 3-17-21)**

Docket 69

Tentative Ruling:

Tentative for 5/19/21:
Grant.

Tentative for 3/17/21:
Debtor filed a modification motion November 3, 2020 upon which the Trustee filed comments recommending against. Debtor has taken no other action. Should that be set for hearing? Continue to coincide with any hearing regarding modification. If none is set, grant dismissal motion on continued hearing April 14.

Tentative for 1/20/21:
Grant unless current. Appearance: required

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

**United States Bankruptcy Court
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3:00 PM

CONT... Wendie Lorraine Brigham

Chapter 13

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
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Hearing Room 5B

3:00 PM

8:19-12629 Eduardo Meza

Chapter 13

#26.00 Trustee's Verified Motion For Dismissing Chapter 13 Proceeding Case Failure To Make Plan Payment

Docket 123

Tentative Ruling:

Tentative for 5/19/21:
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
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3:00 PM

8:19-13241 Colleen Ann Brooks

Chapter 13

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

Docket 29

Tentative Ruling:

Tentative for 5/19/21:
Grant unless modification motion on file.

Party Information

Debtor(s):

Colleen Ann Brooks

Represented By
D Justin Harelik

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

3:00 PM

8:19-14344 Maria De Lourdes Chavez

Chapter 13

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

Docket 43

Tentative Ruling:

Tentative for 5/19/21:

Grant unless current or other curative motion on file.

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
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Hearing Room 5B

3:00 PM

8:18-10136 Rilla Ann Huml

Chapter 13

#29.00 Motion To Reconsider Its Amended Order Entered On March 26, 2021 As Docket 95 (the "Order") Granting Debtor's Motion To Reopen The Case For The Purpose Of Allowing Her To Amend Her Schedule Of Assets

Docket 98

Tentative Ruling:

Tentative for 5/19/21:

This is creditor, Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely as the trustee for the Brougham Fund I Trust's ("Secured Creditor") motion for the court to reconsider its amended order entered on March 26, 2021 as docket # 95 (the "order") granting debtor's motion to reopen the case for the purpose of allowing her to amend her schedule of assets. The motion is opposed by debtor, Rilla Ann Huml ("Debtor").

Background Facts

1. On January 16, 2018, Debtor filed the instant voluntary Chapter 13 Bankruptcy petition.
2. This is the fourth bankruptcy filing over the past seven years.
3. The Debtor filed her Schedules under penalty of perjury, listing Secured Creditor's claim in Schedules A and D as undisputed.¹ In her Schedule A, she listed no potential actions against Secured Creditor as an asset of the estate.
4. A Motion to Dismiss was filed by the Chapter 13 trustee on April 5, 2019 for failure to pay the plan payments on the plan that had been previously confirmed.

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5. Thereafter, on April 8, 2019, a few days after the Motion to Dismiss was filed, Debtor filed a lawsuit in Orange County Superior Court against Secured Creditor and another creditor that also held a lien on the real property located at 25 Medici, Aliso Viejo, California (the "Property"). This asset was apparently never previously disclosed.

6. The lawsuit alleged that Debtor had preexisting disputes with Secured Creditor although they were allegedly never raised in this bankruptcy, nor were her Schedules ever amended to reflect the existence of any such dispute as a potential asset of her estate.

7. The Superior Court lawsuit was removed to the United States District in the Central District of California in March 2020 as Case No. 8:20-cv-00489-DOC-KESx3 (the "District Court Action").

8. In the District Court Action, Secured Creditor filed a joinder to a motion for judgment on the pleadings that was filed by the other named defendant creditor.

9. The order granting the motion for judgment on the pleadings (and the joinder) was entered by the District Court on January 21, 2021 ("District Court Order") and is now final.

10. The District Court Order extensively discusses the history of the actions taken by the respective parties which led to the granting of the judgment on the pleadings and the joinder.

11. The District Court Order at pages 16-17 specifically made a finding that Debtor's alleged claims against Secured Creditor were equitably barred as she had not timely included them in her bankruptcy Schedules.

12. On February 16, 2021, about a month after the District Court Order was entered, knowing that her actions were barred, Debtor came back to this Court asking to reopen her closed case (at docket 86) so that she could amend her Schedules to list the barred claim against Secured Creditor. She

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did not disclose the existence of the District Court Order to this court.

13. This Court entered its Order on March 26, 2021 to reopen the case so that Debtor could amend her Schedules.

Legal Authority

FRCP 59(e), made applicable in bankruptcy proceedings by FRBP 9023, allows a court to reconsider and amend a previous order, but provides an extraordinary remedy that should be used sparingly in the interests of finality and conservation of judicial resources. *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003), citing, 12 Moore's Federal Practice ¶ 59.30[4] (3d ed.2000). A motion for reconsideration under Rule 59(e) serves a narrow purpose, and should not be granted, absent highly unusual circumstances, unless the court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law. *Id.*, citing, *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). While Rule 59(e) allows a court to alter or amend a judgment, it "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 (U.S. 2008) (internal citations omitted). Courts "[enjoy] considerable discretion in granting or denying" a motion to alter or amend judgment. *McIntosh v. N. Cal. Universal Enters.*, 2010 U.S. Dist. LEXIS 76611 (E.D. Cal. July 7, 2010) quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255, n. 1 (9th Cir. 1999). A FRCP 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation. *Id.*

Should the Court Amend Its Previous Order?

Secured Creditor argues that reconsideration of the order that allowed

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this case to be reopened for the purpose of Debtor amending her Schedules to add an asset related to claims against Secured Creditor is warranted because there is no asset to be administered as it was barred. Secured Creditor argues the only intended result sought by the Debtor was to circumvent the final District Court Order which barred Debtor from pursuing the very claim she represented to this court was an asset of her estate. Secured Creditor asserts that Debtor intentionally misled this court, and that there was no such asset, nor was there any benefit served by reopening the bankruptcy for the purpose of allowing Debtor to amend her Schedules to show an asset that does not exist.

Secured Creditor cites *Kvassay v. Kvassay (In re Kvassay)*, 2016 Bankr. LEXIS 3653 at *9 (9th Cir. B.A.P. 2016) where the court stated, "when the undisputed facts in the record unequivocally establish that reopening the case would be a 'pointless exercise,' the bankruptcy court may deny the motion to reopen on that basis. See, e.g., *Beezley v. Cal. Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1437 (9th Cir. 1993)." Here, Secured Creditor argues not only was the motion to reopen a pointless exercise, it was in direct contravention to an existing and final District Court Order that prevented Debtor from asserting the claim. Secured Creditor draws the court's attention to a pertinent section of the District Court's Order, which describes Debtor's inequitable alleged conduct as follows:

"Here, Plaintiff knew about her potential RESPA claim before and during the pendency of the Bankruptcy Case. As discussed above, in January 2019, she wrote a letter citing RESPA and claiming violations had occurred as early as March 2017. She filed the state lawsuit during the pendency of the Bankruptcy Case. Plaintiff also had a motive to conceal the claim. Plaintiff wanted to get Wells Fargo and BSI to stipulate to abandon their motions for relief from the automatic stay and to make other concessions to avoid foreclosure, which they did.

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They likely would have acted differently if she had forthrightly disclosed claims against them that she might pursue later. Plaintiff admits that suing Wells Fargo and BSI was Plan B which she pursued only after Plan A (i.e., using the automatic stay to delay payment and leverage concessions from Wells Fargo and BSI) did not work. (Dkt. 69 at 10 [Plaintiff had no "intention" to sue Wells Fargo or BSI when she filed her Chapter 13 petition], 15 [Wells Fargo surprised Plaintiff by opposing confirmation of her proposed plan and moving for relief from the automatic stay, actions Plaintiff feared would "invalidate" the protection against foreclosure she expected to receive from the bankruptcy process], 7-8 [Plaintiff had an "incentive" to sue Wells Fargo only after it obtained relief from the automatic stay].) Again, equitable estoppel is intended to prevent exactly this kind of stratagem in bankruptcy proceedings." Order Granting Motion for Judgment On The Pleadings and Joinder, Exhibit 1, p. 12

Based on the above passage, Secured Creditor argues that cause exists for this court to reconsider its order allowing Debtor to amend her schedules.

Debtor opposes the motion, though, as she is without counsel, her opposition is unfortunately not as organized or clear as it otherwise might be. Thus, determining the relevance of her factual recitation is difficult. However, Debtor does assert that Secured Creditor remains a separate defendant from BSI Financial in case# 8:20-cv-00489-DOC-KES and they have not been joined to Wells Fargo's motion for dismissal on the pleadings based on Judicial Estoppel. Debtor appears to be incorrect. Debtor may be unaware, but Secured Creditor asserts that it purchased the loan from Wells Fargo and is the current holder of the loan, and is therefore, entitled to seek this relief, which appears to be correct. Debtor also makes vague accusations, without evidence, that Secured Creditor is abusing her rights and unfairly

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manipulating the bankruptcy process to improve its own position. Debtor does not really address the above findings from the Order on the Motion for Judgment on The Pleadings. Importantly, none of these material facts were disclosed to the court and should have been.

Secured Creditor seems to have both law and equity on its side, and the motion should be granted.

Grant

Party Information

Debtor(s):

Rilla Ann Huml

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

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#30.00 Motion for Order for Return of Estate Property Re Alamos Real Estate Partners II, LP, [Claims Register No. 05]

Docket 121

Tentative Ruling:

Tentative for 5/19/21:
Grant.

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

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8:21-10352 Rene Charles Paiz and Teresa Ann Paiz

Chapter 13

#31.00 Motion For Order Determining Value Of Collateral

Docket 23

Tentative Ruling:

Tentative for 5/19/21:
Grant.

Party Information

Debtor(s):

Rene Charles Paiz

Represented By
Heather J Canning

Joint Debtor(s):

Teresa Ann Paiz

Represented By
Heather J Canning

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

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#32.00 OSC Re Contempt And Damages, Including Punitive Damages, For Violation Of The Stay Is Issued Re: Motion For Order Declaring Michael J. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 1987 And Stephan Andranian In Violation Of The Automatic Stay Pursuant To 11 U.S.C. §362; Enjoining Prosecution Of Complaint In Arbitration; And For An Order To Show Cause Re: Contempt Against Michael R. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 187 And Stephan Andranian For Violating The Automatic Stay
(osc set from hrg held on 2-17-21 re: motion)

Docket 127

***** VACATED *** REASON: CONTINUED TO 7-21-21 AT 3:00 P.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON ORDER TO SHOW CAUSE RE: CONTEMPT AND DAMAGES,
INCLUDING PUNITIVE DAMAGES, FOR VIOLATION OF THE
AUTOMATIC STAY ENTERED 4-16-21**

Tentative Ruling:

Tentative for 2/17/21:

This is debtors, James and Kathleen Caringella's ("Debtors") motion for an order declaring Michael Kaplan, in his individual capacity and as trustee of the Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 1987 ("Kaplan"), and Kaplan's counsel, Stephen Andranian ("Andranian"), in violation of the automatic stay of 11 U.S.C. §362. The motion also seeks to enjoin prosecution of a complaint in arbitration. Finally, the motion seeks an order to show cause why Kaplan and Andranian should not be held in contempt. The motion is opposed by both Kaplan and Andranian (collectively "Opponents").

1. Factual Background

The somewhat serpentine facts of this case are reported by Debtors as

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follows:

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Debtors filed a voluntary petition under chapter 13 on November 20, 2018. On November 23, 2018, the Clerk of the Bankruptcy Court caused written notice of the filing and of the automatic stay to be noticed to all interested parties, including Opponents. Several years earlier, on January 22, 2016, Kaplan filed a Complaint in the Orange County Superior Court, Case No. 30-2016-00831667-CU-BC-CJC (the "Kaplan State Court Action") against Debtor James G. Caringella and his son, alleging claims for assault, battery and false imprisonment. Kaplan also attempted to allege claims for breach of fiduciary and fraud based on his contention that Debtor: (1) had used his position at Field Time Target & Training, LLC ("Field Time"), a California limited liability company 80% owned by Kaplan and 20% owned by Debtor, for his own personal benefit by reimbursing himself for personal items for his and his family's use; (2) had charged gasoline for personal reasons on the company credit card; (3) had improperly registered trademarks belonging to Field Time in his own name; (4) had made statements regarding Field Time's financial condition "through various reports and financial statements" that were false; and (5) had opened "secret bank accounts" and taken money from Field Time without Kaplan's knowledge or permission.

Less than a month later, on February 16, 2016, Kaplan, as the controlling member of Field Time, caused Field Time to file a separate state court action against Debtor and his family members, alleging the same claims based on the same facts for breach of fiduciary duty and fraud, Orange County Superior Court Case No. 30-2016-00835665-CU-BC-CJC (the "Field Time State Court Action"). Specifically, Field Time alleged that Debtor: (1) mismanaged Field Time; (2) stole Field Time property; (3) made representations "through various reports and financial statements" regarding Field Time's financial condition and business expenses that were false; (4) opened "secret bank accounts" without Kaplan's permission or knowledge; (5) registered trademarks in his own name; and (6) charged gasoline for personal reasons on the company credit card.

On November 20, 2018, the same date the bankruptcy petition was filed, Kaplan obtained a default judgment against Debtor in the Kaplan State

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Court Action in the amount of \$100,353.93, based solely on his claims for assault, battery and false imprisonment. At the time, Debtor had been abandoned by his personal attorney due to a personal tragedy involving the attorney's stepson. Debtor was allegedly unaware the default judgment had been entered. On November 20, 2018, Field Time also obtained a default judgment against Debtor in the Field Time State Court Action based on its claims that Debtor: (a) had converted Field Time's property for his own personal use; (b) had removed Field Time records and bank information, had failed to turn over passwords and other information, and had opened "secret" bank accounts; and (c) improperly had charged gasoline on a company credit card that he used for his personal and family use.

On January 2, 2019, Kaplan and Field Time each filed Proofs of Claim in this Court. Kaplan's Proof of Claim is in the amount of \$100,353.93, based exclusively on the Default Judgment he obtained against Debtor in the Kaplan State Court Action. Kaplan has apparently never amended his Proof of Claim. Field Time's Proof of Claim is in the amount of \$101,695.98, based exclusively on the Default Judgment it obtained in the Field Time State Court Action.

On June 12, 2019, this Court entered an Order Granting Relief from Automatic Stay Pursuant to Stipulation. The Order provides, in relevant part, as follows:

IT IS HEREBY ORDERED THAT the validity and amount of Claim No. 6-1 filed by Michael Kaplan will be determined through the adjudication of that certain case now pending in the California Superior Court for the County of Orange, Case No. 30-2016-00831677-CU-BC-CJC, styled Michael R. Kaplan, an individual and as trustee of the Michael R. Kaplan Revocable Intervivos Trust dated May 26, 1987 v. James G. Caringella and Craig Caringella (the "Kaplan Action").

IT IS FURTHER ORDERED THAT the validity and amount of Claim No. 7-1 filed by Field Time Target and Training LLC will be determined through the adjudication of that certain case now pending in the California Superior Court for the County of Orange, Case No. 30-2016-00835665-CU-BC-CJC, styled Field Time Target & Training,

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LLC v. James G. Caringella, etc. et.al. (the "Field Time Action").

IT IS FURTHER ORDERED THAT the automatic stay under the United States Bankruptcy Code, 11 U.S.C. Section 362(a) is terminated as to the Debtors and the Debtors' bankruptcy estate with respect to the Kaplan Action and the Field Time Action.

IT IS FURTHER ORDERED THAT Kaplan and Field Time may proceed in their respective Actions in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law. Kaplan and Field Time are directed to request that the State Court make sufficient finding for this Court to base a determination of the dischargeability of Kaplan and Field Time's respective claims.

Debtor obtained relief from the default judgment entered against him in the Field Time State Court Action on January 11, 2019. Field Time then proceeded to actively litigate the claims on which its default judgment was based. Thereafter, in the face of a subpoena Debtor served on Field Time's CPA to obtain its financial records, Kaplan caused Field Time to dismiss the Field Time Action on October 21, 2019. On January 20, 2020, Kaplan caused Field Time to withdraw its Proof of Claim in the Bankruptcy Court. Debtor also obtained an Order setting aside the Default Judgment obtained by Kaplan in the Kaplan State Court Action on January 24, 2020. Kaplan therefore had the right to again pursue those claims on which the Default Judgment was based, i.e., his First, Second and Third Causes of Action for assault, battery and false imprisonment. By this time, Field Time was actively litigating the claims for breach of fiduciary and fraud in the Field Time State Court Action, which is the subject of its own Proof of Claim.

Kaplan thereafter moved the State Court to compel arbitration of his claims, and those asserted by Debtor in his Cross-Complaint filed on February 13, 2020, which the State Court granted on July 13, 2020. After the State Court granted his motion to compel arbitration, on July 13, 2020, Kaplan filed his Complaint in Arbitration with Judicial Arbitration and Mediation Service in Orange, California. Kaplan mailed the Complaint in

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Arbitration to Debtor's attorneys for the first time on August 31, 2020. The Complaint in Arbitration does not contain any of the claims on which Kaplan's Proof of Claim or default judgment are based, to wit, his assault, battery and false imprisonment claims. Instead, Kaplan alleges the same claims that Field Time had alleged in its Complaint in the Field Time State Court Action, along with new equitable claims seeking dissolution of Field Time and an order requiring Debtor to sell to Kaplan his interest in Field Time. Debtor filed a Motion to Dismiss the Complaint in Arbitration in the Orange County Superior Court on October 5, 2020, based in part on the fact that Kaplan's claims violated the automatic stay in bankruptcy. Specifically, Debtor argued in his motion that Kaplan was barred from asserting derivatively the very same claims that are the subject of Field Time's dismissed Superior Court action and withdrawn Proof of Claim. Debtor further argued that this Court's Order for Relief from Stay limited Kaplan to litigating the claims reflected in his Proof of Claim, which consist solely of his claims for assault, battery and false imprisonment. Kaplan has never sought or obtained relief from stay to pursue any other claims against Debtor. On December 4, 2020, the Superior Court entered its Order denying Debtor's Motion without reaching the merits. The Superior Court found that it could not consider Debtor's Motion, due to the stay it had previously granted when it issued its order compelling arbitration of Kaplan's claims. Debtor believes he has no recourse but to seek relief directly from this Court.

2. Legal Authority

Pursuant to 11 U.S.C. 362(a), the filing of a bankruptcy petition operates as an automatic stay as to:

- (1) The commencement or continuation, including the issuance and employment of process, of a judicial, administrative or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . .

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Orders for relief from stay are strictly construed. *In re Rader*, 488 B.R. 406, 413 (9th Cir. BAP 2013). An order granting relief from stay to permit a party to proceed to judgment in an action pending in state court is effective only as to claims: (1) actually pending in state court at the time the order modifying the stay is issued; or (2) that were expressly brought to the bankruptcy court's attention during the relief from stay proceedings. *In re Wardrobe*, 559 F.3d 932, 937 (9th Cir. 2009). A withdrawn claim is treated as a nullity, leaving the parties in the same position as if the claim had never been filed. *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995).

3. Was There A Violation of The Automatic Stay?

The short answer is probably, yes. Essentially, what Debtors are arguing is that the order for relief from stay is narrow in scope and should be narrowly construed to mean that Kaplan was only given leave to pursue his claims against Debtor, but not to pursue claims that likely belong to another entity, namely Field Time, especially since those claims were apparently withdrawn and Kaplan cannot claim any direct harm. By including Field Time's causes of action in the arbitration complaint, Debtors persuasively argue, Kaplan has violated the automatic stay by not seeking this court's authority to pursue those claims on his own behalf. Kaplan argues that the relief from stay order was intended to be broad in scope, and so the filing of an arbitration complaint incorporating Field Time's causes of action in state court could not reasonably be a violation of this court's order. Kaplan argues that the *Wardrobe* case relied on by Debtors is distinguishable because the rule as articulated in *Wardrobe* is to ensure that the parties know in advance what causes of action are covered by the relief from stay order. Kaplan asserts that the causes of action were known to both Debtors and this court because the order covered both Kaplan's and Field Time's causes of action. The court is not convinced. It seems obvious that even if the causes of action remain the same in name, if the identity of the plaintiff is changed, then it really is a new claim because the analysis of that claim will be different. Also, obviously, the defense strategy will be different based on the identity of the complainant. Thus, the court takes the view that exchanging claims even

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between related entities likely constitutes new causes of action for which relief from stay would, again, need to be sought so that every interested party is on notice of what the movant intends.

Kaplan concedes that there might be one new claim in the amended complaint that falls outside the relief from stay order by seeking to compel Debtor to perform his obligations under the terms of the operating agreement and turn over his 20% interest in the LLC. However, Kaplan argues that, while this claim may not have been previously asserted, this claim was by no means unknown to Debtors as it was part of Debtor's counterclaim, and so not really "new" within the meaning of the *Wardrobe* rule. Thus, Kaplan argues, there was no violation of automatic stay, and no injunctive or declaratory relief is warranted. In the court's view, this is a close call, but Debtors are probably correct that Kaplan violated the automatic stay by alleging a new cause of action arguably not contemplated, and therefore, not explicitly covered by the relief from stay order. The court takes a dim view of litigants taking too much license with its orders, especially since relief from stay orders are to be narrowly construed. At the very least, Kaplan must have known that by alleging a new cause of action, he was risking violating the relief from stay order. As Debtors point out, Kaplan should have sought either permission or clarification from this court before proceeding with its new claim against Debtor. See *Wardrobe*, 559 F.3d at 937 ("Furthermore, in the event that a previously unforeseen cause of action becomes apparent during a trial proceeding pursuant to an order granting relief from the automatic stay, numerous avenues of relief are available to a creditor to ensure that any resulting judgment does not violate the scope of the order. A creditor could petition the bankruptcy court for relief that is broad enough to encompass the cause of action; [or] could seek an order from the bankruptcy court clarifying the relief from stay order[.]")

Kaplan also argues that this motion is procedurally defective because, under FRBP 7001(7) injunctive relief is properly brought through an adversary proceeding, not by motion. Similarly, an action seeking declaratory relief is also to be brought by adversary proceeding pursuant to FRBP 7001(9). This ensures that the usual procedural safeguards are in place. Debtors argue that this court has the power to grant the relief without an adversary proceeding

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under the broad authority of 11 U.S.C. §105(a). But §105 is not a free ranging charge to do equity. It is intended instead to implement powers or duties otherwise expressly stated in the Code. See *In re Hornsby*, 2013 WL 4200947 at *2 (Bankr. E.D. Cal. 2013) citing *In re Lloyd*, 37 F.3d 271, 275 (7th Cir. 1994) ("While Congress ensured that there was a statutory basis for the bankruptcy and district court judges having the authority to issue all orders necessary and proper to carry out the Bankruptcy Code, 11 U.S.C. § 105(a) is not the grant of a free ranging authority to do whatever the judge thinks should be right."). See also *Law v. Siegel*, 571 U.S. 415, 421 (2014) citing 2 Collier on Bankruptcy ¶105.01[2], p. 105-6 (16th ed. 2013) ("It is hornbook law that §105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'"); *American Hardwoods, Inc. v. Deutsche Credit Corporation (In re American Hardwoods, Inc.)* 885 F.2d 621 (9th Cir. 1989) ("While endowing the court with general equitable powers, section 105 does not authorize relief inconsistent with more specific law.") The court sees no reason to deviate from the rules of bankruptcy procedure. The motion also seeks an order to show cause why Kaplan and Andranian should not be held in contempt for violating the stay order and here, the court is persuaded that such relief may be warranted.

Thus, declaratory and injunctive relief will be denied as procedurally improper, but the request for an order to show cause why Kaplan and Andranian should not be held in contempt for violating this court's relief from stay orders will be granted.

The court admonishes the parties to take a step back and approach these issues practically. This court is not likely to undertake resolution of matters by litigation that are already the subject of state court proceedings. Nor is this court likely to issue orders that have a practical effect of undercutting the Superior Court's interpretations of state law, as for example may be implicated by a court's order compelling arbitration. Further, this is a Chapter 13. By definition the resources are limited, and it makes little sense to accrue a large administrative fee that would jeopardize the success of any plan. Should the court order these matters to mediation? The court will hear argument on that last point.

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*Deny declaratory and injunctive relief as procedurally improper. Issue
OSC re violation of the stay.*

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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#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/1604237840>

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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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Tuesday, May 25, 2021

Hearing Room 5B

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CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, May 25, 2021

Hearing Room 5B

10:30 AM

8:17-14117 Richard Paul Herman

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**FINANCIAL SERVICES VEHICLE TRUST
Vs.
DEBTOR**

Docket 199

Tentative Ruling:

Tentative for 5/25/21:

While the court is hopeful that the parties can reach an arrangement this is not a grounds for denying relief of stay under § 362(d). Grant.

Party Information

Debtor(s):

Richard Paul Herman

Represented By
Michael Jones
Sara Tidd
Richard P Herman

Movant(s):

Financial Services Vehicle Trust

Represented By
Marjorie M Johnson

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, May 25, 2021

Hearing Room 5B

10:30 AM

8:20-11802 Mary Vermiglio Whitney and Jack Douglas Whitney

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 4-13-21)**

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR
ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-M2
Vs
DEBTORS**

Docket 47

Tentative Ruling:

Tentative for 5/25/21:
Grant. Appearance: optional

Tentative for 4/13/21:
While the court hopes that the loan modification is successful, this is not a
defense to relief of stay. Post confirmation defaults are not well received.

Grant absent agreed APO. Appearance: optional

Party Information

Debtor(s):

Mary Vermiglio Whitney

Represented By
Chris T Nguyen

Joint Debtor(s):

Jack Douglas Whitney

Represented By
Chris T Nguyen

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

Tuesday, May 25, 2021

Hearing Room 5B

10:30 AM

CONT... Mary Vermiglio Whitney and Jack Douglas Whitney

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, May 25, 2021

Hearing Room 5B

10:30 AM

8:20-12856 1875 N Palm Canyon Partners II, LLC

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**THE EVERGREEN ADVANTAGE, LLC
Vs.
DEBTOR**

Docket 58

Tentative Ruling:

Tentative for 5/25/21:
Grant. Appearance: optional

Party Information

Debtor(s):

1875 N Palm Canyon Partners II,

Represented By
Edmond Richard McGuire
Marisol A Nagata

Movant(s):

The Evergreen Advantage, LLC

Represented By
Edward T Weber

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, May 25, 2021

Hearing Room 5B

11:00 AM

8:21-11049 American CNG Energy, LLC

Chapter 7

#4.00 Order To Show Cause Why Case Should Not Be Dismissed The Case Was Filed Without An Attorney

Docket 1

Tentative Ruling:

Tentative for 5/25/21:
Dismiss. Appearance: optional

Party Information

Debtor(s):

American CNG Energy, LLC Pro Se

Trustee(s):

Richard A Marshack (TR) Pro Se

**United States Bankruptcy Court
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Santa Ana
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Tuesday, May 25, 2021

Hearing Room 5B

11:00 AM

8:21-10588 Gregory Edward Smith and Erin Marie Smith

Chapter 7

#5.00 Motion to Avoid Lien Under 11 U.S.C. Section 522(f) And, If Applicable, For Turnover Of Property (Personal Property)

Docket 11

Tentative Ruling:

Tentative for 5/25/21:

Continue to coincide with hearing on objection to exemption June 29 @ 11:00. More briefing is expected on the question of whether under any circumstances a bankruptcy exemption, and thus logically a 522(f) motion, can be asserted successfully in property that is not property of the estate, such as corporate property of a wholly-owned professional corporation. Normally the estate holds only the shares, not the individual items of corporate property. On the other hand, California's statute suggests the "wildcard" of CCP§703.140(b)(5) can be asserted in "any property" without clarification that the judgment debtor holds title or even an interest ? Would assignment to mediation assist?

Party Information

Debtor(s):

Gregory Edward Smith

Represented By
Eliza Ghanooni

Joint Debtor(s):

Erin Marie Smith

Represented By
Eliza Ghanooni

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

11:00 AM

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

Chapter 7

#6.00 Chapter 7 Trustee To Make An Interim Distribution Of The Warn Class' Administrative Claim Pursuant to Approved Settlement

Docket 2951

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION TO AUTHORIZE CHAPTER 7 TRUSTEE
TO MAKE AN INTERIM DISTRIBUTION OF THE WARN CLASS'
ADMINISTRATIVE CLAIM PURSUANT TO APPROVED SETTLEMENT
FILED 4-29-21**

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

Trustee(s):

Karen S Naylor (TR)

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

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CONT... Anna's Linens, Inc.

Chapter 7

Todd C. Ringstad
Brett Ramsaur
Richard C Donahoo
Andrew Still

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10:00 AM
8:00-00000

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/1610850537>

ZoomGov meeting number: 161 085 0537

Password: 567776

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 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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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)
(cont'd from 4-08-21)

Docket 1

Tentative Ruling:

Tentative for 5/26/21:
Continue to coincide with default judgment hearing June 24, 2021 @ 11:00AM.

Tentative for 4/8/21:
Status?

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.

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CONT... Stephen Nguyen

Chapter 7

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

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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10:00 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

**#2.00 Post-Confirmation Status Conference RE: Chapter 11 Voluntary Petition
(cont'd from 1-13-21)**

Docket 1

Tentative Ruling:

Tentative for 5/26/21:
See ##3 and 4.

Tentative for 1/13/21:
Continue conference to coincide with final payment due under the plan in
approximately May. Appearance:optional

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

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10:00 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

#3.00 Motion For Discharge Of Their Individual Chapter 11 Case

Docket 277

Tentative Ruling:

Tentative for 5/26/21:
Grant.

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

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10:00 AM

8:14-11072 Gerald Deplan Bratcher and Beverley Diana Bratcher

Chapter 11

#4.00 Motion For Final Decree and Order Closing Case.

Docket 279

Tentative Ruling:

Tentative for 5/26/21:
Grant, appearance on all three matters optional.

Party Information

Debtor(s):

Gerald Deplan Bratcher

Represented By
John E Mortimer

Joint Debtor(s):

Beverley Diana Bratcher

Represented By
John E Mortimer

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Santa Ana
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Hearing Room 5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#5.00 Plan Confirmation Hearing Re:Plan Of Reorganization
(cont'd from 03-03-21 per order apprvg. stip. to cont. the hrg on
confirmation of debtor's ch 11 plan entered 2-23-21)

Docket 342

***** VACATED *** REASON: CONTINUED TO 7-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
HEARING ON CONFIRMATION OF DEBTOR'S CHAPTER 11 PLAN
ENTERED 5-25-21**

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

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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.

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

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10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#6.00 Objection to Claims Of RBS Citizens, N.A., Citizens Financial Group, Inc
(cont'd from 4-28-21 per order approvg stip. to cont. objection to claims
entered 4-27-21)

Docket 379

***** VACATED *** REASON: CONTINUED TO 7-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
HEARING ON DEBTOR'S OBJECTION TO CLAIMS OF RBS CITIZENS,
N.A., CITIZENS FINANCIAL GROUP, INC ENTERED 5-25-21**

Tentative Ruling:

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Movant(s):

Ron S Arad

Represented By
G Bryan Brannan

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Hearing Room 5B

10:00 AM

8:20-11560 Joe Anthony Santa Maria

Chapter 11

#7.00 Debtor's Motion For An Order Granting A Stay Pending Appeal Of The Court's Order Converting The Case To Chapter 11

Docket 70

Tentative Ruling:

Tentative for 5/26/21:

This is debtor's motion for stay pending appeal of the court's order entered April 21, 2021 converting the case to Chapter 11 upon motion of the IRS, the principal creditor. As the court stated at the time, this is an unusual and difficult case. As the court found earlier, the debtor could, if he chose to, probably confirm a plan since it is obvious that non priority creditors would likely get nothing in Chapter 7 ; indeed, the trustee has already filed a "no asset report." But apparently the debtor has decided that he does not want to repay the IRS through a plan, even if he could afford to do so, but rather he expects to negotiate more favorable terms for repayment to IRS of only the non-dischargeable portions of its claim once he obtains a discharge of all other debt. This case probably should have been a Chapter 13 but Section 707(b) does not permit dismissal except for cause, nor an involuntary conversion of the case to 11 or 13 if debts are primarily consumer debts. But left open is the prospect of conversion under §706(b) to Chapter 11 (but not to 12 or 13 under subsection (c)) if debts, as here, are primarily non-consumer. Of course, the debtor might still decide to convert to chapter 13, perhaps to avoid the parade of horrors described in the moving papers about coming up with the huge retainer etc. allegedly required by Chapter 11 counsel.

The court readily concedes that this is an unusual case. Normally, obtaining confirmation in most Chapter 11s is an uphill fight and the percentage of success in most individual cases is not high. But the only reason we are considering this obstacle is debtor's unwillingness to embrace the more user-friendly provisions of Chapter 13. It is also unusual in that normally, as here, the §707(b) means test would force either dismissal or conversion for a debtor who could afford to pay something to creditors under

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CONT... **Joe Anthony Santa Maria**

Chapter 11

the "means test." But none of that applies where the debts are primarily non-consumer debts. So, the question becomes whether, as debtor apparently contends, such a scenario requires treatment only in Chapter 7 liquidation as debtor cannot be forced to try a reorganization plan, even if he could do so. Stated differently, does the fact that the possibility of involuntary conversion under §706(b) exists reflect a deliberate choice of Congress, or instead just as an oversight in the statutory scheme? What caselaw exists suggest the former. The court would value the teachings of a higher court as well, but the additional question is whether because the scenario is unusual debtor should get a multiple-year hiatus while it is being sorted out legally.

The four-part test federal courts utilize when considering stays pending appeal such as discussed in *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) leaves the court still unconvinced, as analyzed below:

(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. Each of these factors is analyzed below:

Likelihood of Success On The Merits

Here, Debtor asserts that this court erred in converting his case to chapter 11 because the factors the court considered do not support the conversion. When reviewing a section 706(b) motion, courts consider various factors, including (1) the debtor's ability to repay debt; (2) the absence of immediate grounds for reconversion; (3) the likelihood of confirmation of a Chapter 11 plan; and (4) whether the parties in interest would benefit from conversion." *Decker v. U.S. Trustee*, 548 B.R. 813, 817 (D. Alaska 2015).

Debtor asserts that his ability to repay the debt is speculative at best because his income is variable. Debtor also argues that there are likely immediate grounds for reconversion. Debtor points out that the court conceded at the hearing that this was a "difficult issue." Debtor also points out that if he cannot afford to pay an attorney to guide him through the chapter 11 process, the typical result would be conversion to chapter 7. As to the likelihood of confirmation of a plan, Debtor argues that the major issue will be

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CONT... **Joe Anthony Santa Maria**

Chapter 11

his net disposable income, which as noted, Debtor claims is highly speculative. Debtor argues that if a hypothetical plan proposed to pay less than 100% of the total debt, the plan would violate the absolute priority rule. Debtor asserts that he has no ability to offer new value and even if he proposed new value, there would almost surely be an objection from the IRS about whether the new value is appropriate and sufficient which would introduce new factual issues like the value of each of his assets. Thus, Debtor concludes, confirmation of a plan is speculative bordering on unlikely. Finally, Debtor argues that the only parties that are certain to benefit from conversion to chapter 11 will be the attorneys involved. The racking up of huge administrative expenses takes funds away from unsecured creditors and decreases the chances that the IRS will be paid in full. Then there is also the involuntary servitude angle, which Debtor asserts this court did not give sufficient weight (but it was considered, analyzed in the last tentative and need not be repeated here). Thus, Debtor argues, the court erred in converting the case to chapter 11 and believes a reviewing court will agree with his position.

The IRS argues that Debtor has not demonstrated a high likelihood of success because he cannot show that this court abused its discretion. The IRS argues that Debtor does not demonstrate that the court misapplied the law, based its ruling on clearly erroneous findings, or committed any other clear error. Specifically, in the Stay Motion, the Debtor fails to show how the Bankruptcy Court made an error in its analysis in determining the various factors to support its decision to grant the Section 706(b) motion, including the (1) the debtor's ability to repay debt; (2) the absence of immediate grounds for reconversion; (3) the likelihood of confirmation of a chapter 11 plan; and (4) whether the parties in interest would benefit from conversion. Moreover, in this motion, Debtor's arguments are simply legal conclusions with little to no analysis. Instead, the IRS argues, Debtor makes sweeping conclusions about the larger policy implications from this court's ruling which the IRS asserts are overblown and speculative. Thus, the IRS concludes, Debtor has failed to show a likelihood of success on the merits.

The court notes that some of Debtor's points assume a worst case scenario. For example, although the absolute priority rule of §1129(b)(2)(B) (ii) might be implicated, it also might not necessarily be so if impaired classes

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CONT... **Joe Anthony Santa Maria**

Chapter 11

do not object to confirmation. IRS may well not object so as to avoid the very scenario debtor outlines, i.e. conversion to Chapter 7. Similarly, other classes of unsecured creditors also may well decide not to object to such a plan that gives them the prospect of something over the certainty of nothing. New value only arises where cramdown is attempted over dissenting classes. Moreover, the alleged extravagant fees are likely overblown as well. At bottom this is a very simple case. Form plans are available on the court's website and, as stated, creditor opposition may be mild or nonexistent.

This factor weighs in favor of the IRS and against a stay. Debtor does not point to any clear error or mistake of fact that informed the court's prior decision. The court maintains its belief that its conversion order was issued within the confines of its discretion, admitting it is a close call. It is certainly possible but not necessarily probable that a different court may reach a different conclusion.

Irreparable Injury

Debtor argues that he will suffer irreparable injury because if this matter is reversed on appeal, Debtor will have no party from whom to seek damages. Being forced to spend an estimated \$30,000 to \$40,000 on attorneys for a chapter 11 is more than "potential economic hardship." It is allegedly real and is certain to occur. But the IRS next argues that Debtor does not face the prospect of irreparable injury because his asserted injury is purely economic. The IRS cites *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.* 944 F.2d 597, 603 (9th Cir. 1991) for the proposition that, "economic injury alone does not support a finding of irreparable harm, because such injury can be remedied by a damage award." However, that is exactly Debtor's concern, that he will be forced to incur significant legal fees to comply with the requirements of chapter 11, but will have no practical remedy if his appeal is successful and the case reverts to chapter 7, or if a plan is ultimately unconfirmable. The court agrees with the IRS that a confirmable plan, at present, seems singularly plausible, if not probable. The court thinks it unlikely that much creditor resistance, if any, will be encountered so long as best efforts are made. Creditors have no good alternative. Of course, the estimated amount of fees is entirely speculative and, of course, all of this might be avoided in Chapter 13, which is where this

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CONT... **Joe Anthony Santa Maria**

Chapter 11

case belongs. Moreover, the projected \$30-40,000 in fees is wildly speculative and probably inflated since, as suggested, confirmation involving best efforts may be unopposed. As much if not more might be spent on the appeal, it could be said. This factor also does not favor the debtor.

Balance of Hardships

Debtor argues that the balance of hardships weighs in his favor as he is faced with having to pay substantial sums in order to get a chapter 11 plan drafted, proposed, and confirmed despite the many hurdles that can, and in his opinion, are likely to appear. The IRS, he argues, will only suffer a delay in proceedings and possible collection on the debt. Besides, Debtor argues, Debtor will remain under the watchful eye of the bankruptcy court during the pendency of the appeal, which means any expenditure out of the ordinary would require court approval. Thus, allegedly the only thing the IRS loses is time.

The IRS argues that it will be greatly harmed if the motion is granted because of the delay that will necessarily follow, especially since Debtor could appeal all the way to the Ninth Circuit, which could take years. During that time, the tax debt would continue to grow through interest and penalties and as more time passes, the likelihood of repayment will be reduced. But so long as this case is in Chapter 11 the post-petition wages are property of the estate, and so must be accounted for. See §1115.

Both sides make valid points. But another point is that lost time affects both sides, not just IRS. Under §1129(a)(9)(c) the five-year window within which certain tax claims can be paid in installments continues to shrink during an appeal. Moreover, a plan that pays a certain amount monthly to IRS inevitably benefits the debtor in that there is a large portion of the debt that is admittedly non dischargeable. A plan could simply provide that payments are allocated there first, such that if debtor ultimately prevails on appeal, he is no further behind, as he would have had to pay these monies, or at least a good portion, someday anyway. This factor ends up neutral.

Public Interest

Finally, Debtor asserts that there will be no harm to the public interest

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CONT... **Joe Anthony Santa Maria**

Chapter 11

in a stay. Debtor argues that the appeal raises legitimate issues of public policy and the public would actually benefit from getting guidance from the reviewing courts.

The IRS counter argues that the public has an interest in timely and orderly resolution of bankruptcy cases, a goal that would be served by denial of the motion. However, the public also has an interest in ensuring that the court achieves a correct and just result in its orders. To be clear, the court believes it did just that in its conversion order. The court is also under no illusion that Debtor's primary motivation is to pay the IRS as little as possible. Still, Debtor has a right to his appeal and the public has a strong interest in the exercise of such a right. But in the end the debtor will need to make tax payments somehow, eventually. While the court does not wish to put Debtor into a deeper financial hole while there is a chance that he could succeed on appeal, there are ways to mitigate that harm while the appeal is pending. Moreover, debtor's decision to attempt this route instead of chapter 13 is either largely his own decision or is encouraged by the desire of counsel to get a favorable precedent. But for reasons already stated the public's interest in getting a definitive answer is not necessarily harmed by requiring performance in the meantime. This factor is also neutral.

Conclusion

This is an unusual case and the answer is not entirely clear. But the court is not satisfied that debtor has demonstrated that everything needs to be put on hold while it is being sorted out or that there is any compelling reason to stay the proceedings.

Deny

Party Information

Debtor(s):

Joe Anthony Santa Maria

Represented By
Nicholas W Gebelt
M. Jonathan Hayes

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Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#8.00 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 2-24-21 per order approving third stipulation between strategic funding source and detor authorizing interim use of cash collateral entered 2-23-21)

Docket 6

Tentative Ruling:

Tentative for 5/26/21:
Is this still an active issue? Status?

Tentative for 2/24/21:
Continue on same terms and conditions pending hearing on disclosure on March 3, 2021 @ 10:00 a.m.

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.

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

Wednesday, May 26, 2021

Hearing Room 5B

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
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, May 26, 2021

Hearing Room

5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

#9.00 Motion To Approve Compromise With Slate Advance [FRBP 9019(a)]

Docket 162

Tentative Ruling:

Tentative for 5/26/21:
Grant.

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, May 26, 2021

Hearing Room 5B

10:00 AM

8:21-10256 BioXXel, LLC

Chapter 11

#10.00 Motion for Order Authorizing Sale of Real Property Located at 30590 Cochise Circle, Murrieta, CA; (A) Outside the Ordinary Course of Business; (B) Free and Clear of Liens, Claims, and Encumbrances; (C) Subject to Overbid; (D) For Determination of Good Faith Purchaser Under 11 USC Section 363(M); and (E) Authorization to Assume and Assign Executory Contracts and Unexpired Leases Pursuant to 11 USC Section 365

Docket 93

Tentative Ruling:

Tentative for 5/26/21:
Grant.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood
Laila Masud
Matthew Grimshaw

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

Wednesday, May 26, 2021

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

#11.00 Order Setting Allegations Of Post-Petition Default

Docket 0

Tentative Ruling:

Tentative for 5/26/21:
Status? Would a mediation assist?

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

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

Wednesday, May 26, 2021

Hearing Room 5B

10:00 AM

8:20-10958 Bradley Ray Fox

Chapter 11

#12.00 Emergency Motion by Chapter 11 Trustee for Order: (1) Enforcing the Sale Order; (2) Requiring Debtor to Turn Over Real Property; (3) Determining that no Eviction Moratorium Applies to this Turnover Proceeding; and (4) Authorizing Issuance of Writ of Assistance
(OST Signed 5-24-21)

Docket 183

Tentative Ruling:

Tentative for 5/26/21:

This hopefully will prove to be much ado about nothing. Debtor should understand a few things:

1. He does not own this property. His estate does. He is a tenant at sufferance, at best. So, he is not in a position to dictate timing on anything and is well advised not to try;
2. The buyers want him out before closing. This is understandable as no new owner wants the extra burden of initiating eviction proceedings. They want what they bargained for, a home ready for move in;
3. It is not clear the court has the jurisdiction or inclination to dictate anything to the buyers, so as a practical matter unless debtor wants to blow up this sale he should move out and well in advance. If he does intend to blow up the sale he is cautioned that is not likely to end well. While the court appreciates his concern for his son's schooling that is simply not something he is privileged to make other parties' problem or to pay for, in effect;
4. If this falls out of escrow because of actions of the debtor in refusing to cooperate timely, this may degenerate into expensive litigation, which does not benefit anyone, and the discharge may be affected as well. See 11 U.S.C. §727(a)(6);
5. Mention is made of Ms. Roth's new demand in escrow for what she claims is her entitlement to proceeds. If that was not part of the court's original order, and the court does not recall that it was, it is not to be made part of it

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10:00 AM

CONT...

Bradley Ray Fox

Chapter 11

now, and Ms. Roth risks a charge of intentional interference with contract or contempt, or both. As the court recalls, the funds net of institutional mortgages were to be paid either to debtor's counsel's trust account or to the trustee, to be held in trust pending further determination by the court. That should be the same now and everyone is cautioned not to make a problem in this regard. While the court is willing to allow a couple days grace the debtor must move, and now, See 11 U.S.C. §542(a). The Trustee shall submit an order accordingly.

Party Information

Debtor(s):

Bradley Ray Fox

Represented By
Christopher C Barsness

Trustee(s):

Thomas H Casey (TR)

Represented By
Todd C. Ringstad

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1611235431>

ZoomGov meeting number: 161 123 5431

Password: 546419

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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Judge Theodor Albert, Presiding
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Thursday, May 27, 2021

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
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 27, 2021

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**

Thursday, May 27, 2021

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

#1.00 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 (set from pre-trial conf. hrg held on 2-11-21)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION TO CONSOLIDATE RELATED ADVERSARY PROCEEDING [LEAD CASE 8:20-AP-01002 TA CONSOLIDATED WITH MEMBER CASE 8:20-AP-01079 TA ENTERED 3-03-21**

Tentative Ruling:

Tentative for 2/11/21:

Why have we not heard anything from Olga Shabanets after the order setting aside default? Before setting deadlines for trial preparation shouldn't we have input from her? Was she served with alias summons and is so subject to another default? There is some suggestion that these two adversaries (# 20-01079 and #20-01002} should be combined for adjudication. If so, it would seem appropriate to first administratively merge the matters. The court will hear argument on that point.

Tentative for 1/14/21:

Continue to February 11, 2021 @ 10 a.m.

Appearance: optional

Tentative for 7/23/20:

Same schedule as #9.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

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

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
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Thursday, May 27, 2021

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

#2.00 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 4-22-21)

Docket 1

Tentative Ruling:

Tentative for 5/27/21:

A continuance was asked last time in order to process a default judgment, yet nothing has been filed. One more continuance to June 24 @ 10:00AM.

Tentative for 4/22/21:

Status on default judgment?

Tentative for 3/25/21:

When will the default judgment motion with supporting papers be filed?

Tentative for 2/25/21:

What is status of default judgment application?

Tentative for 1/28/21:

Status on filing of motion supporting default judgment? Appearance: optional

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10:00 AM

CONT... Heather Huong Ngoc Luu

Chapter 7

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, May 27, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:21-01001 Marshack v. American Express National Bank

**#3.00 STATUS CONFERENCE RE: Complaint For: 1) Avoidance of Transfers Pursuant to 11 USC Section 544(b) and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05; 2) Avoidance of Transfers Pursuant to 11 USC Section 548(a)(1)(B); 3) Recovery of Avoided Transfers Pursuant to 11 USC Section 550; and 4) Disallowance of Claims Pursuant to 11 USC Section 502
(cont'd from 3-25-21 per order approving stip. to extend response date to plaintiff's amended complaint and cont. s/c entered 3-16-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-01-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 5-18-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

American Express National Bank

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

**United States Bankruptcy Court
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Santa Ana
Judge Theodor Albert, Presiding
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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:21-01002 Marshack v. Swift Financial Corporation et al

#4.00 STATUS CONFERENCE RE: Complaint For: 1) Usury; 2) Unconscionability; 3) Negligence Per Se--Violation of California Finance Lending Law; 4) Violation of California Business and Professions Code Section 17200; 5) Unjust Enrichment/Disgorgement; 6) Fraud; 7) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 USC Section 544(b) and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05; 8) Determination of Liens Pursuant to 11 USC Sections 502, 506 and 551; and 9) Injunction and Declaratory Relief
(cont'd from 3-25-21 per order approving stip. to cont. status conf. entered 3-10-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-29-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 5-14-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Swift Financial Corporation

Pro Se

Paypal, Inc.

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

CONT... i.i. Fuels, Inc.

Rafael R Garcia-Salgado

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

8:20-12416 Michele Lynn Stover

Chapter 7

Adv#: 8:21-01013 Bidoglio v. Stover

#5.00 STATUS CONFERENCE RE: Complaint To Determine Nondischargeability Of Debt

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-10-21 AT 10:00 A.M.
PER ANOTHER SUMMONS ISSUED ON 3-26-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michele Lynn Stover

Represented By
Christopher J Langley

Defendant(s):

Michele Lynn Stover

Pro Se

Plaintiff(s):

Ana L Bidoglio

Represented By
Henry J Josefsberg

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#6.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's
Objection To And Motion To Disallow Proof Of Claim No. 61 Filed By Lakeview
Loan Servicing, LLC
(set from s/c hrg held on 11-03-20)

Docket 255

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION BETWEEN LEXINGTON NATIONAL INSURANCE
CORPORATION AND LAKEVIEW LOANS SERVICING, LLC
RESOLVING THE OBJECTION TO & MOTION TO DISALLOW PROOF
OF CLAIM #61 ENTERED 2-12-21**

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
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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#7.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
**(set from obj. to & mtn to disallow proof of clm no. 65 hrg held on 8-11-20)
(cont'd from 4-08-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select protfolio servicing, inc. for extension of deadlines in scheduling order entered 2-25-21)**

Docket 258

***** VACATED *** REASON: CONTINUED TO 7-15-21 AT 10:00 A.M.
PER ORDER GRANTING JOINT STPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 4-30-21**

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 –

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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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.

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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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select Portfolio Servicing, Inc.
(set from s/c hrg held on 8-11-20)
(cont'd from 4-08-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select portfolio servicing, inc. for extension of deadlines in scheduling order entered 2-25-21)

Docket 260

*** VACATED *** REASON: CONTINUED TO 7-15-21 AT 10:00 A.M.
PER ORDER GRANTING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC AND SELECT PORTFOLIO SERVICING, INC.
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 4-30-21

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.

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10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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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Thursday, May 27, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#9.00 PRE-TRIAL 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
(set from s/c hrg. held on 8-11-20)
(cont'd from 4-08-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select portfolio servicing, inc. for extension of deadlines in scheduling order entered 2-25-21)

Docket 476

*** VACATED *** REASON: CONTINUED TO 7-15-21 AT 10:00 A.M.
PER ORDER GRANTING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION, SPECIALIZED
LOAN SERVICING LLC, AND SELECT PORTFOLIO SERVICING, INC
FOR EXTENSION OF DEADLINES IN SCHEDULING ORDER
ENTERED 4-30-21

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.

Party Information

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Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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
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Thursday, May 27, 2021

Hearing Room 5B

11:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

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

#10.00 Defendants Motion For Determination By Bankruptcy Court Of Existence And Non-Waiver Of Jury Trial Rights

Docket 187

Tentative Ruling:

Tentative for 5/27/21:

This is the motion of certain defendants: BeachPointe Investments, Inc., George Bawuah, Jerry Bolnick, Joseph Bolnick, Jonathan Blau, Kenneth Miller, Peter Van Petten, Raymond Midley, and Veronica Marfori's (collectively "Defendants") motion for determination by this court of existence and non-waiver of jury trial rights. The motion is opposed by the chapter 7 trustee, Richard Marshack ("Trustee" or "Plaintiff").

1. Factual and Procedural Background

Defendants were not named in the original Complaint in the bankruptcy adversary proceeding at issue and were named for the first time in a First Amended Complaint ("FAC"). Defendants filed an answer to the FAC on April 15, 2019. On page 2, paragraph 3 of Defendants' answer, the following phrase appears:

"Defendants, however, reserve and assert all jurisdictional defenses, and at this time, do not consent to entry of final judgment in this matter by the Bankruptcy Court. Defendants further assert their right to a jury trial."

Plaintiff filed a Second Amended Complaint ("SAC"), which is the operative complaint in this adversary proceeding, on January 21, 2020. Defendants filed their answer to the SAC on February 20, 2020. In the answer Defendants include the following phrase:

"Defendants, however, reserve and assert all jurisdictional defenses,

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Judge Theodor Albert, Presiding
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Hearing Room

5B

11:00 AM

CONT...

Luminance Recovery Center, LLC

Chapter 7

and at this time, do not consent to entry of final judgment in this matter by the Bankruptcy Court. Defendants further assert their right to a jury trial."

A further explicit demand for a jury trial is included on page 16 of the Defendants' answer to the SAC. Finally, as it was included in the caption for the answer, the phrase "Demand For Jury Trial" also appears on the proof of service accompanying Defendants' answer to the SAC.

Plaintiff's operative complaint, the SAC, asserts four causes of action against Defendants: three causes of action for fraudulent conveyance; and one cause of action for "unlawful dividends," which expressly alleges that it seeks recovery of a total of \$1,229,881.44 allegedly paid to the Defendants.

Under this Court's operative scheduling order, the pre-trial conference is currently set for June 3, 2021, at which time the case will be ready to be set for trial. All non-expert discovery has been completed; the parties have exchanged expert reports and rebuttal expert reports; and the discovery cut-off for expert depositions is May 31, 2021.

On February 15, 2021, Defendants filed before the District Court a motion to withdraw the reference of this adversary proceeding. On March 1, 2021, Plaintiff filed an opposition to the motion to withdraw the reference, arguing among other things that Defendants had waived their right to trial by jury. On March 23, 2021, the District Court issued its Order denying the motion to withdraw the reference without prejudice. The District Court stated in pertinent part:

The question of whether Moving Defendants waived their right to a jury trial should be decided in the first instance by the Bankruptcy Court, which is an "appropriate tribunal for determine whether there is a right to a trial by jury of issues for which a jury trial is demanded." . . . The Bankruptcy Court is better equipped to interpret the Local Bankruptcy Rules and determine whether and to what extent a jury trial in the district court is warranted. Further, assuming Plaintiff's argument has merit, the Bankruptcy Court is in a better position to grant Moving Defendants relief from a defective jury demand. See *In re Daley*, 584

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B.R. at 916 (declining to deem jury demand inoperative for failure to provide statement of consent); see also Bankr. C.D. Cal. R 1001-1(d) (permitting Bankruptcy Court to waive application of Local Bankruptcy Rules.). District Court Order Denying Motion To Withdraw The Reference p. 5, lines 2-19.

This motion followed.

2. Did Defendants Retain Their Right To A Jury Trial?

FRBP 9015 makes FRCP 38 applicable in bankruptcy proceedings. FRCP 38(a) preserves the right to trial by jury contained in the Seventh Amendment of the United States Constitution. FRCP 38(b) requires a party to demand a trial by jury of any issue not later than 10 days after the service of the last pleading directed to such issue. FRCP 38(d) provides that failure to serve and file a demand constitutes a waiver of trial by jury. When a party has waived the right to a jury trial with respect to the original complaint and answer by failing to make a timely demand, amendments of the pleadings that do not change the issues do not revive this right. *Lutz v. Glendale Union High School*, 403 F.3d 1061, 1066 (9th Cir. 2005). The presentation of a new theory does not constitute the presentation of a new issue on which a jury trial should be granted. *Id.*, citing *Trixler Brokerage Co. v. Ralston Purina Co.*, 505 F.2d 1045, 1050 (9th Cir. 1974) (presentation of a new theory does not constitute the presentation of a new issue on which a jury trial should be granted.). Rule 38(b) is concerned with issues of fact. *Id.*, citing, *Las Vegas Sun, Inc. v. Summa Corp.*, 610 F.2d 614, 620 (9th Cir. 1979). "Because the right to a jury trial is a fundamental right guaranteed to our citizenry by the Constitution, courts should indulge every reasonable presumption against waiver." *Pradier v. Elespuru*, 641 F.2d 808, 811 (9th Cir. 1981). "A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply." See Fed. R. Civ. P. 83(a)(2). "A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement." See Fed. R. Bankr. P. 9029(a)(2).

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Here, the operative local rule is LBR 9015-2, which states in pertinent part:

- (1) A party claiming a right to trial by jury must make a demand as specified in subsection (b) of this rule...
- (b) Demand.
 - (1) Time and Form of Demand. A party must demand a trial by jury in accordance with F.R.Civ.P. 38(b).
 - (2) Statement of Consent. A demand must include a statement that the party does or does not consent to a jury trial conducted by the bankruptcy court. Within 14 days of the service of the demand and statement of consent or non-consent, all other parties must file and serve a statement of consent or non-consent to a jury trial conducted by the bankruptcy court.

There is no dispute that Defendants failed to comply with the strict language of the local rule cited above. But, pursuant to the case law and statutes cited above, this conceded failure to abide by the LBRs does not end the inquiry. As noted, three of the asserted causes of action against Defendant are for fraudulent conveyances. Defendants have not filed a proof of claim against the bankruptcy estate. In *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 63-65 (1989) the Supreme Court held that when a bankruptcy trustee brings a fraudulent transfer action against another party who has not filed a proof of claim in the bankruptcy case, the suit is considered a suit at common law; and as a result, the right to a jury trial exists under the Seventh Amendment. Pursuant to *Granfinanciera*, Defendants would normally be entitled to a jury trial under the Seventh Amendment, certainly on the fraudulent transfer claims.

The last claim, unlawful dividends, is a somewhat closer question. Defendants assert that Plaintiff in his claim for "unlawful dividends" expressly seeks a judgment against Defendants in a sum certain, that is, "in the amount of the unlawful dividends taken on account of their shareholder (sic) interest in the Debtors." Defendants argue that Plaintiff nowhere pleads for or

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requests equitable relief. Rather, Defendants argue, Plaintiff seeks to impose personal liability on Defendants for the payment of a specific sum of money. Thus, Defendants conclude, Plaintiff's claim is "considered legal because he [seeks] 'to obtain a judgment imposing a merely personal liability upon the [Defendants] to pay a sum of money.'" *Great-West Life & Annuity Insurance Company v. Knudson*, 534 U.S. 204, 213 (2002).

Trustee argues that the facts of *Knudson* are distinguishable because here Trustee is not seeking to recover money owed under a contract. Rather, Trustee argues, the relief sought is more akin to the equitable remedy of an accounting. Further, the Trustee argues that his claim for unlawful dividends under California law is also akin to a claim to disgorge improper profits. See Cal. Corp. Code §§ 17704.06(c) and 17704.05. Section 17704.05 prohibits an insolvent company from making distributions to its members. See Cal. Corp. Code § 17704.05(a). Section 17704.06, in turn, authorizes the recovery of improper distributions that failed to comply with § 17704.05. See Cal. Corp. Code § 17704.06(c). Trustee argues that a claim for unlawful dividends is restitutionary in nature because it restores the status quo and puts the company in the position it would have been in had the improper distributions not been made. See *Hopkins v. Saunders*, 199 F.3d 968, 977 (8th Cir. 1999); see also *Tull v. United States*, 481 U.S. 412, 424 (1987). Because the Trustee's claim to recover unlawful dividends is equitable, Trustee argues, Defendants are not entitled to a jury trial on the first cause of action.

Both sides make fair points. But, as a practical matter, even if this cause of action were equitable in nature, would it not just be more simple and efficient to have the unlawful dividends claim heard along with the three fraudulent conveyance claims as they seem to rely on many of the same operative facts? So, to the extent that the 7th Amendment right to a jury is preserved as to some of the claims, it makes very little practical sense to bifurcate it for trial.

Despite the fact that the three fraudulent conveyance claims would normally entitle Defendants to a jury trial under the Seventh Amendment, Trustee argues that the demand was improper under the operative local rule; that this motion is untimely as violative of the motion schedule; and that this is

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just a naked attempt at forum shopping. At least two of those points appear to have been conceded by Defendants. Even if Trustee is correct about all those points, does it matter in this case?

To answer this question, it is critical that all parties remember what is at stake here. The case law makes clear that the court has some discretion over whether and how strictly to apply the local rules when doing so might deprive a party of a right due to that party's own inadvertence or mistake. The right at stake here is a constitutionally guaranteed fundamental right, and thus, the court is obliged to proceed with extreme caution when deciding whether such an important right has been irretrievably waived.

In the court's view, this is a very close call, especially since Defendants concede that they did not comply with the local rule governing a demand for a jury trial and also apparently conceded that the motion to withdraw the reference was an attempt at forum shopping. Trustee argues that Defendants' motion does not make a showing that their failure to heed the local rules was the result of mistake or inadvertence. However, Defendants do say on page 11 of the motion that the failure was due to "inadvertence:"

"First, based on Bankruptcy Local Rule 9015-2(b)(2), which requires that a demand for jury trial also contain a statement whether the party consents or does not consent to a jury trial being conducted by the Bankruptcy Court, Plaintiff argued that Defendants' inadvertent failure to comply with this portion of the Local Rule must constitute a complete waiver of jury trial rights."

To be sure, this is not a particularly strong or specific statement asserting inadvertence, but the implication is still clear. This sentiment is elaborated upon in the accompanying declaration of Evan C. Borges, counsel for Defendants, where he unequivocally states:

"At the time we filed the Answers to the First Amended Complaint and the Second Amended Complaint, my intent, as set forth in the Answers, was to assert jury trial rights on behalf of Defendants. While I take full responsibility, at the time we demanded jury trial rights in the Answers, I was not aware of the Bankruptcy Local Rule requirement

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that one must include in a demand for jury trial a statement of consent or lack of consent to a jury trial in the Bankruptcy Court. At no time did I or Defendants intend to waive any jury trial rights, which is why we asserted jury trial rights in the Answer to the First Amended Complaint and the Answer to the Second Amended Complaint. Defendants have been very clear with me from inception that a jury trial is extremely important to them, and at no time did Defendants or I consent to a jury trial in the Bankruptcy Court." Borges Declaration, p. 3.

The court, as mentioned above, notes that in Defendants' answer to both the FAC and SAC, explicit demands for a jury trial were made, even if somewhat incorrectly. In the answer to the FAC, the demand appears on the first substantive page, so it is hardly buried in the answer. Also as noted above, in Defendants' answer to the SAC, the demand for a jury trial, though again improper, is present in several places that would be difficult to miss. Thus, Plaintiff cannot really claim to be surprised by Defendants' aggressive attempts to secure the right they believed they had preserved and always intended to assert. Trustee does an admirable job of exhaustively discussing the case law and drawing distinctions between those cases and this one. However, the court is guided not necessarily by analogy to case law, but by the underlying policy that the right to a jury trial is a fundamental one, and thus, the court should indulge every reasonable presumption against waiver. *See Pradier v. Elespuru*, 641 F.2d at 811. In the court's view, Defendants have done just enough to show that the court should indulge their explanation for their primary failing, failure to comply strictly with the local rule. To do otherwise would seem an unduly harsh penalty given Defendants' clear intent. In the end, procedural traps, and surprises, however important generally in preserving efficiency of proceedings, should bow to more fundamental rights such as the right to a jury, and this court always has discretion to waive application of the LBRs in the interest of justice. *Id.*: See also *Serror v. Robert P. Daley, CPA, Inc. (In re Daley)* 584 B.R. 911, 916 (Bankr. C.D. 2018). The court is also not persuaded, under these specific circumstances, that this motion should be denied because it is arguably untimely under the scheduling order. The court understands that Trustee will likely be frustrated by the extra delay and expense that empaneling a jury may cause, but that does not and should not outweigh Defendants' interests

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in claiming their fundamental rights.

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Finally, with respect to the possible equitable nature of one of the claims for relief and the affirmative defenses (i.e., laches and estoppel), Defendants persuasively argue that those do not change the conclusion that Defendants are entitled to a jury trial. Defendants assert that these defenses most likely will not be an issue at trial. The main issues to be tried relate to the financial condition or solvency of Debtor before and at the time of the payments to Defendants, which is a question of fact for the jury to decide on the fraudulent conveyance claims as well as the claim for alleged unlawful dividends. Moreover, Defendants argue, if an equitable defense of estoppel becomes relevant at trial, the court simply can instruct the jury to make relevant findings of fact. Defendants submit, and this court agrees, that these issues are more appropriately addressed by the trial court in the context of deciding disputes over the parties' jury instructions and verdict forms, which is provided for in the District Court Local Rules in dealing with pre-trial matters, but not addressed in the Bankruptcy Court Local Rules. The court agrees that because the equitable defenses are still hypothetical, they are not before the court at this time, and the trial court, in any case, is well-equipped to handle them if they become relevant. Besides, it makes no practical sense to have a trial in the Bankruptcy Court solely on affirmative defenses.

Enter order clarifying as above. The parties should be prepared to discuss when the case should be transferred to the District Court for trial.

Party Information

Debtor(s):

Luminance Recovery Center, LLC

Represented By
Jeffrey I Golden
Beth Gaschen

Defendant(s):

Raymond Midley

Represented By
Evan C Borges
Richard Klein

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Peter Van Petten	Represented By Evan C Borges Richard Klein
Kenneth Miller	Represented By Evan C Borges Richard Klein
Maria Castanon	Represented By Carlos A De La Paz
Joseph Bolnick	Represented By Evan C Borges Richard Klein
Veronica Marfori	Represented By Evan C Borges Richard Klein
Jerry Bolnick	Represented By Evan C Borges Richard Klein
George Bawuah	Represented By Evan C Borges Richard Klein
BeachPointe Investments, Inc.	Represented By Evan C Borges Richard Klein
Michael Edward Castanon	Represented By Rhonda Walker Carlos A De La Paz
Jonathan Blau	Represented By Evan C Borges

Movant(s):

BeachPointe Investments, Inc.	Represented By Evan C Borges
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	Richard Klein
George Bawuah	Represented By Evan C Borges Richard Klein
Jerry Bolnick	Represented By Evan C Borges Richard Klein
Jonathan Blau	Represented By Evan C Borges
Joseph Bolnick	Represented By Evan C Borges Richard Klein
Kenneth Miller	Represented By Evan C Borges Richard Klein
Peter Van Petten	Represented By Evan C Borges Richard Klein
Raymond Midley	Represented By Evan C Borges Richard Klein
Veronica Marfori	Represented By Evan C Borges Richard Klein

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
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D Edward Hays
David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw
M Douglas Flahaut
Annie Y Stoops
Judith E Marshack
Sharon Oh-Kubisch
Faye C Rasch
Robert S Marticello

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8:20-12416 Michele Lynn Stover

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Adv#: 8:21-01013 Bidoglio v. Stover

#11.00 Motion For More Definite Statement Under Fed Rule Civ Pro 12(e)

Docket 5

Tentative Ruling:

Tentative for 5/27/21:

This is debtor/defendant, Michele Stover's ("Debtor") motion for a more definite statement made pursuant to FRCP 12(e). The motion is opposed by plaintiff, Ana Bidoglio ("Plaintiff") who, through this adversary proceeding, seeks an exception to debtor's discharge pursuant to 11 U.S.C. §523(a)(6) allegedly for Debtor's alleged mistreatment of Plaintiff while the two were co-workers at BP Fisher Law Group, LLP. 11 U.S.C. §523(a)(6) provides in pertinent part:

(a) 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—

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity[.]

There are three elements that must be established to succeed in a Section 523(a)(6) action: (1) willfulness; (2) maliciousness and (3) injury. *Smith v. Entrepreneur Media, Inc. (In re Smith)* 2009 Bankr. LEXIS 4582, *20 (9th Cir. BAP 2009).

Here, Plaintiff's complaint is rather straightforward and chronicles her alleged mistreatment at the hands of Debtor and the unsympathetic treatment she received from superiors when she made Debtor's alleged misconduct known. In some places in the complaint, as Debtor points out, it is not entirely clear who Plaintiff is accusing of misconduct, but it is clear, even if somewhat unartfully pled, what Plaintiff's allegations substantively entail. Damages are also left uncertain. Plaintiff asserts that damages will be alleged at trial, but that adds a layer of complication given that it is not always clear against

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whom the various allegations are made. So, Plaintiff's complaint could use some clarification in this regard and possibly is itself sufficient to require more definite statement.

However, there is another, and possibly more serious problem with this adversary proceeding. As the court understands it, these are not new allegations that the Plaintiff is making. Apparently, Plaintiff brought these (or very similar) allegations before in state court and was unsuccessful. Debtor cites a state court minute order entered on June 23, 2020 (attached as Exhibit A), which states as follows:

Defendant also produced evidence that Plaintiff also testified that Ms. Stover did not make any comments regarding Plaintiff's gender or disability in emails and that she was not being treated differently or harassed by Ms. Stover because of any disability. (See SUMF Nos. 44-47 (Bidoglio Depo., 116:13-22; 121:11-13 [Q: Did anyone make any disability-based comments in your presence? A: No], 159:3-6 [Q: Did you express to Mr. Browndorf that you were being treated differently or harassed based on a disability or a perceived disability? A: The disability wasn't relevant].) Although Plaintiff contends, she disputes these facts or disputes these facts as misleading, the evidence Plaintiff relies upon for the dispute do not create a triable issue. The testimony above is undisputed.

Plaintiff contends that the court should disregard the minute order attached as Exhibit A to Debtor's motion because judgment was allegedly never finalized and remains interim in character. Plaintiff also argues that, in any case, the minute order is wrong on both the facts and the law.

For reasons unknown, Debtor did not file a reply to the Plaintiff's opposition, so the court is left uncertain where this case stands procedurally in state court. Viewing the attached minute order without context, it certainly appears that the allegations made in state court against Debtor (and others) are mostly, if not completely, substantively identical to those made in the complaint. It seems that if the state court minute order became a final judgment (and that is not clear) with careful findings as to the allegations against Debtor, there would likely be a good chance to dispense with this

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case through Rule 56. However, as noted, the court is uncertain where this case stands in state court. The court is not inclined to undertake any substantive proceedings in this case without knowing whether these issues have already been litigated and collateral estoppel applies. The court will not entertain a *de facto* appeal, if that is what this is, but the court is not persuaded either way, at this time. But it might be another reason for more definite statement.

Thus, the appropriate step at this point is likely to request supplemental briefing on the issue of possible claim preclusion and the prospects for final judgment in state court. It could be that a motion for a more definite statement is not the correct procedural vehicle when a summary proceeding might be more efficient and appropriate.

Continue about thirty days for supplemental briefing.

Party Information

Debtor(s):

Michele Lynn Stover

Represented By
Christopher J Langley

Defendant(s):

Michele Lynn Stover

Represented By
Christopher J Langley

Plaintiff(s):

Ana L Bidoglio

Represented By
Henry J Josefsberg

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:18-13311 Ruby's Diner, Inc., a California corporation

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Adv#: 8:21-01014 Marshack v. Cavanaugh et al

#12.00 Motion For Recusal Of Presiding Judge In Adversary Proceeding

Docket 53

Tentative Ruling:

Tentative for 5/27/21:

This is a follow-up motion brought by Doug Cavanaugh and Ralph Kosmides (collectively, "Movants") to recuse Judge Scott Clarkson from presiding over the adversary proceeding styled *Marshack v. Cavanaugh et al*; 21-ap-01014-SC. The hearing on the original motion in the main case to recuse Judge Clarkson occurred back in September of 2020. In advance of the hearing, the court issued a lengthy and detailed tentative ruling denying the recusal motion. After oral argument, the court adopted its tentative ruling. That adopted tentative ruling, and particularly the recitation of the factual and procedural background, are incorporated herein by reference.

So, what has occurred since September? According to the factual recitation in the motion, following denial of the original motion, on January 27, 2021, the trustees in the Ruby's Diner, Inc. ("RDI") case and in the Ruby's Franchise Systems, Inc. ("RFS") case filed motions in each of their respective cases therein seeking, *inter alia*, the courts' approvals of the RFS estate's assignment of its interests in the D&O Litigation to the RDI Trustee for prosecution in exchange for a 10% share of any net recoveries; the assignment was thereafter approved by order of the court.

On March 11, 2021, the Trustee commenced the Adversary Proceeding before this court by filing an adversary complaint ("Complaint") against the Movants, among others including Beachcomber Management Crystal Cove, LLC, a California limited liability company ("Beachcomber Management"), Lighthouse Café, LLC, a California limited liability company ("Lighthouse Café"), Beachcomber At Crystal Cove, LLC, a California limited

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liability company ("Beachcomber at Crystal Cove"), and Shake Shack Crystal Cove, LLC, a California limited liability company ("Shake Shack") (Beachcomber Management, Lighthouse Café, Beachcomber at Crystal Cove, and Shake Shack are collectively referred to as "Entity Defendants") (Movants together with the Entity Defendants are collectively referred to as "Defendants"), alleging eighteen (18) causes of action arising from or related to the alleged Directors and Officers claims, including: (1) breach of fiduciary duty; (2) aiding and abetting breach of fiduciary duty; (3) avoidance of actual fraudulent transfers under 11 U.S.C. § 548(a)(1)(a); (4) avoidance of constructive fraudulent transfers under 11 U.S.C. § 548(a)(1)(b); (5) recovery of fraudulent transfers under 11 U.S.C. §§ 550 and 551; (6) avoidance and recovery of actually fraudulent transfers under 11 U.S.C. § 544 and Cal. Civ. Code § 3436.04; (7) avoidance and recovery of constructively fraudulent transfers under 11 U.S.C. § 544 and Cal. Civ. Code § 3439.05; (8) recovery of illegal dividends under Cal. Corp. Code §§ 500, 501, and 506; (9) equitable subordination of claims under 11 U.S.C. § 510(c); (10) permanent injunction under Cal. Civ. Code § 3439.07(a)(3)(A); (11) permanent injunction under Cal. Civ. Code § 3439.07(a)(3)(C); (12) breach of contract; (13) money lent; (14) open book account; (15) violation of Penal Code § 496(c); (16) accounting; (17) constructive trust; and (18) misappropriation of trade secrets. The adversary complaint asserts damages of over \$35 million and further includes a demand for a jury trial.

On March 11, 2021, a summons was issued setting the deadline for the Defendants to file and serve a written response to the Complaint by April 12, 2021 and setting the initial status conference for June 2, 2021. On March 30, 2021, the court issued an alias summons as to the Defendants Douglas Cavanaugh, Beachcomber Management, and Beachcomber at Crystal Cove setting the deadline for them to file and serve a written response to the Complaint by April 29, 2021, and setting the initial status conference for June 16, 2021. By stipulation entered on April 12, 2021, the Trustee and Defendants agreed: the Defendants would waive service of the summons and

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Complaint; the Trustee would file a first amended complaint on or before April 29, 2021; the deadlines for the Defendants to respond to the first amended complaint is June 1, 2021; and to continue the status conference from June 16, 2021 to July 21, 2021 or to such later date on which the court is available. On April 14, 2021, the Trustee further filed in the Adversary Proceeding an Application for Right to Attach Order and Order for Issuance of Writ of Attachment as to Douglas Cavanaugh and Application for Right to Attach Order and Order for Issuance of Writ of Attachment as to Ralph Kosmides. The Writ of Attachment Applications were set for hearing before the Court on May 5, 2021 at 1:30 p.m.

On April 21, 2021, the Movants filed their redacted Opposition and Evidentiary Objections to the Writ of Attachment Applications. Concurrently therewith, the Movants also filed their *Ex Parte* Application to file their unredacted Opposition under seal. The Adversary Proceeding is currently in the initial stages of litigation. Accordingly, the Movants bring this Motion seeking the recusal of Judge Clarkson from presiding over the Adversary Proceeding on the ground that the Court's impartiality may be reasonably questioned in view of:

- a. the Court serving as mediator in the four mediation sessions relating to the D&O Litigation, which the Trustee is now pursuing in this Adversary Proceeding against the Movants: and,
- b. the heightened perception resulting from the previous Recusal Order that recusal is now ripe and appropriate.

Is Recusal Appropriate?

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

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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 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."

Rather, 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 again argue that Judge Clarkson's participation in the four mediation sessions has exposed him to highly sensitive and confidential information concerning the viability of the D&O Litigation as a source of payment for administrative fees and unsecured creditors. Specifically, Movants allege that opinions were given by Judge Clarkson to the Movants

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and vice versa concerning the strength of the alleged Directors and Officers claims, Movants' denials or admissions, any offer of payment made by the Movants in exchange for release of the alleged Directors and Officers claims to fund the plan, etc. during closed meetings, which involves information that would not otherwise be available to a trial judge who is only presented with evidence in court. Movants assert that Judge Clarkson's extensive participation in the four mediation sessions on issues germane to the prosecution of the insider claims in this Adversary Proceeding caused Judge Clarkson to acquire extrajudicial knowledge and information that is otherwise inadmissible under Fed. R. Evid. 408 and creates an appearance of impropriety where the instrumental mediator and presiding judge are one and the same.

Movants cite this court's original tentative ruling where this court stated:

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

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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. (emphasis in original).

Movants note that the court included the qualifier "at this time" in the above quoted passage and argue that such a time has come to pass. Movants argue that they would not have consented to mediation if they knew that Judge Clarkson would be deciding dispositive issues in this Adversary Proceeding. Movants provide declarations to the effect that the surrounding circumstances giving rise to the alleged Directors and Officers claims that are the basis for or related to the causes of action asserted in the Adversary Proceeding were discussed with the mediator. For example, Movants assert that the July 25, 2019 transcript clearly shows that the proposed joint plan contemplated litigating against the officers and directors of the Debtor as the source for funding the payment to unsecured creditors and the attorneys' fees of the RDI Committee to pursue the claims.

In sum, Movants urge this court to follow through on its initial impressions of the recusal effort and find that, because the D&O litigation is now active, the appearance of bias, based on Judge Clarkson's being privy to information he would likely not otherwise acquire, is now present and should not be ignored or discounted.

Trustee argues that Movants have not presented any evidence of *actual bias*, and that whatever knowledge Judge Clarkson may have acquired as mediator would not have any influence on his ability to be fair and impartial in adjudicating this adversary proceeding. In fact, as Trustee points out, Judge Clarkson has made statements on the record to the effect that he would not even recognize Movants if he saw them, which, Trustee, argues is

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evidence of how little information Judge Clarkson has relating to Movants, despite his participation in the mediation. Trustee also points out that Judge Clarkson unequivocally stated on the record that he has no bias against either of the movants based on his experience as a mediator or otherwise. Trustee argues that even in the unlikely event that Judge Clarkson was privy to confidential information that would otherwise not be admissible, "[j]udges are presumed to be able to compartmentalize the information they receive and only rely on evidence relevant for a particular decision." *Clifford v. United States*, 136 F.3d 144, 149 (D.C. Cir.1998). This court has no question that Judge Clarkson is not biased and would not prejudge anything. But that is really not the issue.

In the original tentative ruling, the court noted that the Chapter 11 Trustee, Peter Mastan ("Mastan"), had made apparent concessions regarding possible D&O litigation in order to defeat the recusal motion. For example, the court noted that Mastan asserted 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." See adopted Tentative Ruling, p. 8. Trustee also suggested 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 [sic] 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." *Id.*

The court does not cite these prior representations to trap the Chapter 7 Trustee into ceding to the recusal, but what should the court make of them? In other words, why would Mastan take that position and make those assurances? Obviously, the court must and will decide this matter based on

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present conditions and practicality, but the court does not see any drastic changes in conditions that would cause the Chapter 7 Trustee to take a different view than Mastan did, especially as Mastan's view seemed like a suitable middle ground. But maybe the court can be edified in this regard. As far as the court can tell, the major change since September is that the D&O claims went from being contemplated litigation to active litigation. As is plain from the reading of this court's original ruling, the court took comfort from Mastan's assurances that D&O claims, if pursued, would not be before Judge Clarkson except in the event of a settlement.

As the court reads the authorities in this area, recusal is not a purely mechanical exercise, and it is plain that the primary policy concern underlying all cited case law and statutes is the maintenance of judicial integrity by *avoiding even the appearance of partiality* as viewed from the perspective of a reasonable person. As far as the court can tell, Movants have not asserted that any specific or particularly prejudicial information was disclosed to Judge Clarkson that would cause a reasonable person to conclude that Judge Clarkson is biased on any material issue. In the court's view, what we mainly have is suggestion of possible bias, but little if anything concrete. The court is mindful of the case law directing the court to err on the side of recusal if there are reasonable grounds to doubt a judge's objectivity. However, in addition to the facts of this motion and avoiding the mere appearance of bias, there are other policy implications that the court is obliged to weigh. The court is persuaded that ensuring an environment promoting **candor and forthrightness in mediation is an essential policy goal**. To that end, the court is troubled by the possibility that Judge Clarkson's objectivity is doubted by a party to the adversary proceeding due to his participation as a mediator. The court does not doubt Judge Clarkson's sincerity that he believes and in fact that he has no bias against any party in the D&O adversary proceeding. But the court is obliged to preserve the integrity of the judicial process and to take reasonable steps to that end. Movants persuasively argue that they would not have been as candid in the mediation proceedings had they any

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reason to believe that Judge Clarkson would end up a trier of fact. We all want candor in mediation proceedings if they are ever to be successful, which will be defeated (or at least chilled) if this case is offered as a precedent for the possibility of the mediator ending up as trier of fact.

Thus, it seems that the best outcome for all involved would be for Judge Clarkson to not preside over this adversary proceeding because it avoids any murmurs of prejudice, shields Judge Clarkson from having his objectivity impugned any further, and leaves Trustee to litigate this adversary proceeding where the court understood such litigation would take place, i.e. a venue other than Judge Clarkson's court.

Grant recusal as to adversary proceeding.

Party Information

Debtor(s):

Ruby's Diner, Inc., a California

Represented By
William N Lobel
Jeffrey P Nolan

Defendant(s):

Douglas Cavanaugh

Represented By
Leo A Bautista
Aviram Edward Muhtar

Ralph Kosmides

Represented By
Leo A Bautista
Aviram Edward Muhtar

Beachcomber Management Crystal

Pro Se

Lighthouse Cafe, LLC

Pro Se

Beachcomber at Crystal Cove, LLC

Pro Se

Shake Shack Crystal Cove, LLC

Pro Se

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Plaintiff(s):

Richard A. Marshack

Represented By
Christopher Dale Beatty

Trustee(s):

Richard A Marshack (TR)

Represented By
Laila Masud
D Edward Hays
Tinho Mang

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Adv#: 8:21-01011 Vibe Micro, Inc. v. Remares Global, LLC

#13.00 Defendant Remares Global, LLC's Motion to Dismiss Complaint Pursuant FRCP 12(b)(6)
(cont'd from 4-22-21 per stipulation order entered 4-21-21)

Docket 5

Tentative Ruling:

Tentative for 5/27/21:

This is creditor/defendant, Remares Global, LLC's ("Remares") motion to dismiss the complaint filed by creditor/plaintiff Vibe Micro, Inc. ("Vibe Micro") for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). Vibe Micro opposes the motion. Vibe Micro's complaint contains three causes of action: (1) Equitable Subordination of Remares' claim; (2) Recharacterization of Remares' claim; and (3) Objection to Remares' Claim.

1. Facts

The following derive from the statements of facts contained in Vibe Micro's complaint and opposition to the motion, but in the main do not appear to be contested although legal significance of some facts is highly disputed.

A. The Domesticated Judgment

On or about April 22, 2019, Remares purchased a \$10,314,112.97 money judgment against the debtor, Igor Shabanets ("Debtor") in the Circuit Court for the 15th Judicial Circuit in and for Palm Beach County, Florida (the "Florida Judgment"). On or about April 29, 2019, Remares sought to domesticate the Florida Judgment in California, commencing *Remares Global, LLC, as assignee for Omeranio Investments, Ltd. v. Vishnu & AI, LLC, et al.*, Orange County Superior Court (the "Remares State Court Action"). In connection with the Remares State Court Action, Remares filed an Application for Entry Of Judgment On Sister-State Judgment (the "Remares

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Application"), to which Remares attached a clerk-certified copy of its Florida Judgment.

However, Vibe Micro argues, the Remares Application was legally deficient on its face. A clerk-certified copy of a sister-state judgment is legally insufficient to obtain a domesticated judgment in California. Rather, a sister-state judgment (like the Florida Judgment) may only be domesticated in California if it has been certified by both the clerk and the judge of the issuing court. Cal. Code Civ. Proc. § 1710.15(c) (permitting domestication of sister-state judgments only if "A properly authenticated copy of the sister state judgment" is provided); see also comments to California Code of Civil Procedure section 1710.15(c) (explaining that a properly authenticated sister-state judgment must comply with "Section 1738 of Title 28 of the United States Code [as it] requires that full faith and credit be given to judgments authenticated in the manner there set forth").

As the process to obtain a properly authenticated sister-state judgment is time consuming and expensive, Vibe Micro alleges that Remares intentionally disregarded the requirements imposed by Section 1710.15(c) to unfairly expedite the enforcement of the Florida Judgment in California. Although the Orange County Superior Court granted the Remares Application (thereby (allegedly) wrongfully domesticating the Florida Judgment), the domestication of Remares' Florida Judgment was, and remains, improper. Cal. Code Civ. Proc. § 1710.15(c); 28 U.S.C. § 1738. Remares' California Judgment is therefore subject to being vacated and should be deemed unenforceable.

B. Remares Service on Debtor of Notice Of Entry Of Judgment

On or about May 3, 2019, the Orange County Superior Court issued a Notice Of Entry Of Sister-State Judgment in the Remares State Court Action (the "Notice Of Entry Of Judgment"), a document intended to provide the

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Debtor with notice that the \$10,324,378.84 Florida Judgment had been domesticated in California. Indeed, the Notice of Entry of Judgment includes the following language, in bold: "A sister-state judgment has been entered against you in a California court. Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final." (Emphasis in original).

Given the short time period within which a judgment debtor may challenge the entry of a sister state judgment, California law mandates that notice of entry of a judgment "shall be served promptly by the judgment creditor upon the judgment debtor in the manner provided for service of summons." Cal. Code Civ. Proc. § 1710.30. But Remares allegedly failed to comply with Section 1710.30. Vibe Micro alleges Remares refused to "promptly" serve the Debtor with the Notice of Entry Of Judgment in an effort to gain a litigation advantage. Indeed, Remares alleges that the Notice of Entry Of Judgment was not served on the Debtor until May 24, 2019 – 21 days after the Orange County Superior Court issued that document. Moreover, Vibe Micro understands that the Debtor disputes that he has ever been personally served with the Notice of Entry of Judgment.

By the time Remares allegedly served the Notice Of Entry of Judgment, Vibe Micro asserts, Remares allegedly already knew that the Debtor had commenced an appeal of the Florida Judgment in the District Court of Appeal for the Fourth District of Florida. Remares purports to have served the Debtor with the Notice of Entry of Judgment on May 24, 2019; but the Debtor filed and served its Notice of Appeal on Remares three days earlier, on May 21, 2019. Remares allegedly never informed the Orange County Superior Court of the Debtor's appeal challenging the Florida Judgment. Vibe Micro alleges that Remares withheld this information from the Orange County Superior Court because enforcement of sister-state judgments "shall" be stayed when "an appeal from the sister state judgment is pending or may be taken in the state which originally rendered the judgment." Cal. Code Civ. Proc. § 1710.50(a)(1). Vibe Micro alleges that Remares

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purposefully chose not to disclose the pending appeal to the Orange County Superior Court in a concerted effort to expedite the enforcement of the improperly domesticated California Judgment.

In addition to failing to "promptly serve" the Debtor with the Notice of Entry of Judgment as required under California Code of Civil Procedure section 1710.30, Vibe Micro alleges that Remares also failed to personally serve the Debtor with that document as ordered by the Orange County Superior Court. Instead, on or about May 24, 2019, Remares had a process server "toss[] service documents onto the windshield of the vehicle" allegedly being driven by the Debtor's wife ["Olga Shabanets" or "Olga"], thereby causing "the documents to fly onto the street." Therefore, Vibe Micro argues, Debtor never received actual notice of the Notice of Entry of Judgment. Vibe Micro suggests that the decision not to serve Debtor personally was strategically important because had the Debtor been provided with "prompt" notice (or any legally sufficient notice) of the Notice of Entry of Judgment, the Debtor would have sought to vacate and/or stay the enforcement of Remares' California Judgment based upon its timely and then-pending appeal of the Florida Judgment. Further, Vibe Micro argues, while a judgment debtor typically has 30 days following service of a notice of entry of sister-state judgment within which to move to vacate that judgment, if service of the notice is defective, "the sister-state judgment is void for lack of fundamental jurisdiction and the motion to vacate is not subject to the 30-day limitations period." Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2020) ¶ 6:1830.2. Thus, Vibe Micro argues, Remares' California Judgment is void.

C. Remares Obtains *Ex Parte* Relief

Vibe Micro asserts that judgment creditor must generally wait 30 days after serving the judgment debtor with notice of entry of a sister-state judgment before commencing any enforcement proceedings. Cal. Code Civ.

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Proc. § 1710.45(a). But here, Vibe Micro alleges, Remares both refused to "promptly" and personally serve the Notice of Entry of Judgment, and also sought to affirmatively bypass the 30-day waiting period. Just seven days after the Orange County Superior Court issued the Notice of Entry of Judgment, and without any prior attempt to serve the Debtor with that document, Remares allegedly applied to the Orange County Superior Court for *ex parte* relief, seeking "entry of an order authorizing early issuance, certification and recordation of an Abstract of Judgment pursuant to Code of Civil Procedure Section 1710.45(c)."

Vibe Micro alleges that within the *Ex Parte* Application, Remares admits that it intentionally elected not to serve the Notice of Entry of Judgment, and that it had "admittedly not given any notice of any of the following to [Debtor]: (a) the domestication of the subject Florida state court judgment here in California by way of entry of Sister-State Judgment; and/or (b) This [*ex parte*] Application or the hearing hereon." But Remares' counsel, Bob Benjy, allegedly represented to the Orange County Superior Court that if the *Ex Parte* Application were granted, Remares would promptly "follow all otherwise required procedures, including without limitation personally serving the judgment debtor with all case-initiation papers, the issued [Notice Of Entry Of Judgment], all *ex parte* application papers, a copy of the Court's order on this application, and a recorded copy of the requested abstract."

In connection with Remares' unserved *Ex Parte* Application, Mr. Benjy also allegedly submitted a supplemental declaration wherein he represented to the Orange County Superior Court that, "At this time, I have no knowledge of the filing of any Notice of Appeal in connection with the Florida judgment that has since been domesticated in California." Although Vibe Micro concedes that that statement was technically true, it points out that Mr. Benjy allegedly intentionally failed to disclose that the Debtor had 30 days within which to appeal the Florida Judgment, and that there was still 14 days remaining during which the Debtor could timely appeal the Florida Judgment.

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Fla. R. App. P. 9.130(b), thereby avoiding a stay pending appeal in Florida.

Debtor did, in fact, timely appeal from the Florida Judgment. That appeal was taken just eight days after the allegedly undisclosed hearing on Remares' unserved *Ex Parte* Application. The Debtor's appeal of the Florida Judgment was not concluded until February 28, 2020. But as the Debtor commenced its bankruptcy case on December 21, 2019, Vibe Micro argues, had Remares provided Debtor with proper and timely notice of the Remares State Court Action and the various filings/proceedings therein, the Debtor could have prevented Remares from being able to record its abstract of judgment prior to the Debtor's bankruptcy filing. Vibe Micro alleges that Remares never informed the Orange County Superior Court that the Debtor ultimately did timely appeal the Florida Judgment. The Orange County Superior Court granted the *Ex Parte* motion. Remares recorded an abstract of the California Judgment on May 13, 2019, in the Official Records of the County of Orange, State of California (the "Abstract").

Vibe Micro notes that although the Orange County Superior Court allowed Remares to record the Abstract prior to the 30-day waiting period, the Court explicitly ordered Remares to "personally serve Judgment Debtor with copies of: (a) Notice of Entry of Judgment on Sister-State Judgment issued by this Court; (b) all moving papers pertaining to the instant Application; (c) this entered Order; and (d) a recorded, conformed copy of the Abstract" (collectively, the "Court Ordered Service Package"). On May 13, 2019, the Orange County Superior Court issued an order stating that "After Judgment Creditor has successfully caused the foregoing instruments to be personally served on the Judgment Debtor, Judgment creditor shall file a proof of service with the Court evidencing that that has occurred." (the "State Court Order")

D. Remares Allegedly Fails to Personally Serve Debtor

Vibe Micro alleges that despite obtaining *ex parte* relief based partially

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on the representation that Remares would personally serve the Debtor with the Court Ordered Service Package, and being expressly ordered to do so, Remares failed to personally serve the Debtor. Instead, on or about May 24, 2019, Remares allegedly served the Debtor via "substituted service," by allegedly leaving the documents at the Debtor's "home" in the presence of Olga Shabanets. But, as noted above, the service package was allegedly tossed onto the windshield of Olga's moving vehicle. In any case, Vibe Micro argues, the point is that Debtor was not personally served as ordered by the Orange County Superior Court, which was allegedly a condition of the authorization to record its abstract of judgment.

E. Vibe Micro's Claim

On or about November 14, 2018, Vibe Micro obtained a \$5,703,579.81 money judgment against the Debtor's company, SIG Capital, Inc. (the "Vibe Micro Florida Judgment"). After successfully piercing the corporate veil of SIG Capital, Inc, Vibe Micro obtained an order from the Circuit Court for the 17th Judicial Circuit in and for Broward County, Florida, ruling that Debtor "is personally liable to Vibe Micro for the full amount of the [Vibe Micro Florida] Judgment."

Like Remares, Vibe Micro sought to domesticate its Florida-based judgment in California, commencing *Vibe Micro, Inc. v. Sig Capital, Inc., et al.*, Orange County Superior Court Case No. 30-2019-01105060 (the "Vibe Micro California Action"). But unlike Remares, Vibe Micro asserts that it waited until the expiration of the 30-day period during which an appeal could have been taken under Florida law, and then went through the time-consuming and expensive process of obtaining a properly authenticated copy of the Vibe Micro Florida Judgment, signed by both the clerk and the Chief Judge of the 17th Judicial Circuit Court. Indeed, Vibe Micro asserts, while Remares filed its application to domesticate its Florida Judgment in Orange County Superior Court a mere seven days after obtaining its Florida Judgment, Vibe Micro was

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unable to file its application to domesticate the Vibe Micro Florida Judgment until October 15, 2019 – 109 days after obtaining the underlying judgment.

The Orange County Superior Court granted Vibe Micro's application to domesticate the Vibe Micro Florida Judgment on October 15, 2019 and issued a Notice Of Entry Of Sister-State Judgment in the Vibe Micro California Action. In contrast to Remares' alleged conduct, Vibe Micro asserts that it dutifully complied with its service obligations under California Code of Civil Procedure section 1710.30; it promptly and personally served the Debtor with notice of entry of Vibe Micro's California Judgment on October 22, 2019 – just a week after the Vibe Micro California Judgment was entered by the Orange County Superior Court. And again, unlike Remares' alleged conduct, Vibe Micro asserts that it waited the requisite 30-day period required by California before seeking to enforce the Vibe Micro California Judgment against the Debtor. Vibe Micro therefore did not record the abstract it obtained in the Official Records of Orange County until December 12, 2019. Just a few days after Vibe Micro asserts that it personally served the Debtor with a copy of its recorded abstract, the Debtor filed for bankruptcy protection. Given that Vibe Micro's abstract of judgment was recorded within the 90 days preceding the Debtor's bankruptcy filing as is thus an avoidable preference, the Trustee has taken the position that Vibe Micro holds an unsecured claim against the Debtor.

F. Trustee's First Settlement with Remares

On or about September 23, 2020, the Trustee filed his Motion to Approve Settlement and Subordination Agreement With Remares Global, LLC And Global Approach, LLC (the "First Settlement Motion"). Within the First Settlement Motion, the Trustee proposed to sell the Debtor's property located at 2 Monarch Cove in Dana Point, and after satisfying the senior lienholder and paying certain specified costs and fees, the Trustee proposed

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to pay Remares part of the remaining sale proceeds because "while the Property was still vested in Debtor, Remares recorded an Abstract of Judgment against Debtor in excess of \$10.3 million in Orange County, and the recordation [allegedly] created a judgment lien over Debtor's real property assets enforceable pursuant to California Code of Civil Procedure § 695.070."

Vibe Micro objected to the First Settlement Motion, but solely on the ground that Remares' Abstract was invalid because it was recorded at a time when the Debtor's appeal of Remares' Florida Judgment was pending. In response to Vibe Micro's objection to the First Settlement Motion, Remares filed a reply brief arguing that while a stay request would have been granted to the Debtor if he had requested it, "the Debtor never filed a motion to stay enforcement of the sister state judgment in the Superior Court" and therefore California Code of Civil Procedure section 1710.50 was inapplicable. In support of its reply brief, Remares also filed a request for judicial notice attaching the Remares Notice of Entry Of Judgment, the Orange County Superior Court's May 13, 2019 order granting the *Ex Parte* Application, its recorded Abstract, and a copy of the docket in the Remares State Court Action. But, Vibe Micro argues, Remares failed to inform this court that Debtor had no ability or opportunity to "file a motion to stay enforcement" in the Remares State Court Action, because Remares: (1) did not promptly or personally serve the Notice of Entry Of Judgment; (2) did not provide the Debtor with any notice of the *Ex Parte* Application and related hearing; and (3) never personally served the Debtor with Court Ordered Service Package, as required by the State Court Order. For clarity, at the time the First Settlement Motion was being briefed and argued, Vibe Micro asserts that it was unaware of these circumstances and therefore did not, and could not, raise these issues.

On or about November 17, 2020, this court granted the First Settlement Motion and agreed that the stay contemplated under California Code of Civil Procedure section 1710.50 would only apply if "some kind of operative step" had been taken – i.e. the filing of a motion to stay

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G. Trustee's Second Settlement with Remares

On or about January 27, 2021, the Trustee filed his Motion To Approve Settlement And Subordination Agreement With Remares Global, LLC Re Rimmele Drive Property (the "Second Settlement Motion"). On February 25, 2021, this court granted the motion but also ordered that no distribution of proceeds could go forward until Vibe Micro's claim of lien was determined. Vibe Micro clarifies that it does not oppose the sale, it simply wants Remares' claim subordinated to Debtor's other creditors.

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 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

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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. Does Vibe Micro Have Standing?

Remares' first attack on Vibe Micro's complaint is based on Vibe Micro's alleged lack of constitutional and/or prudential standing to bring its causes of action. "A federal court may exercise jurisdiction over a litigant only when the litigant meets constitutional and prudential standing requirements." *In re Veal*, 450 B.R. 897, 906 (9th Cir. BAP 2011). "Constitutional standing requires an injury in fact, which is caused by or fairly traceable to some conduct or some statutory prohibition, and which the requested relief will likely redress." *Id.* To have Article III standing, the plaintiff must show "(1) injury in fact; (2) causation; and (3) likelihood that the injury will be redressed by a favorable decision." *ACLU v. Lomax*, 471 F.3d 1010, 1015 (9th Cir. 2006). Injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *American Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358 (2nd Cir. 2016). The party invoking federal jurisdiction bears the burden to establish Article III standing. *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 867 (9th Cir. 2012). Prudential standing,

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"imposes limitations on the exercise of federal jurisdiction." *In re Edwards*, 454 B.R. 100, 104 (9th Cir. BAP 2011). "One aspect of prudential standing is that a movant must assert its own legal rights and may not assert the legal rights of others." *Id.* "Among other policy considerations, the real party in interest requirement 'ensures that the party bringing the action owns or has rights that can be vindicated by proving the elements of the claim for relief asserted.'" *Id.* at 105. A plaintiff may ordinarily assert only his own legal rights, not those of third parties. *Warth v. Seldin*, 422 U.S. 490,498 (1975). A plaintiff may assert the legal rights of another only when he or she establishes: "(1) a close relationship to the injured party and (2) a barrier to the injured party's ability to assert its own interests." *W.R. Huff Asset Management Co., LLC v. Deloitte & Touche, LLP*, 549 F.3d 100, 109 (2nd Cir. 2008).

Remares argues that Vibe Micro has no standing because it is not injured by a sister-state judgment against Debtor or any liens on Debtor's property stemming from it. Remares also argues that Vibe Micro is attempting to assert Debtor's claims as its own despite not having any close relationship with Debtor or explaining why Debtor (or the trustee) cannot bring these claims on his own behalf. Thus, Remares concludes, Vibe Micro has not established constitutional or prudential standing as a matter of law. Lastly, Remares argues that Vibe Micro lacks standing to attack its sister-state judgment because, it argues, under CCP §1710.40, only a judgment debtor can move to vacate a judgment under this section. See *Liquidator of Integrity Ins. Co. v. Hendrix*, 54 Cal.App.4th 971, 973 (1997) ("The appropriate method of attacking a sister state judgment is under California's Sister State Money Judgments Act, section 1710.10 et seq.") But of course, the real issue from Vibe Micro's viewpoint is the asserted lien of Remares against the property of the estate, which if allowed to stand may eclipse its ability to recover anything

In response, Vibe Micro persuasively cites 11 U.S.C. §502(a), which states, "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of

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this title, objects." See also *In re Weinstein Company Holdings, LLC* 595 B.R. 455, 463 (Bankr. D. Del. 2018) ("The Plaintiff has filed a proof of claim which is prima facie evidence that it is a creditor and thus a 'party in interest' with standing to appear and be heard on any issue in this case, including to object to the claims of other creditors[...] [c]ourts have also found that parties in interest, other than the trustee, have standing to seek modification of another creditor's claim pursuant to section 506(a).") Vibe Micro asserts that as an undisputed creditor of Debtor's estate, it qualifies as a party in interest because the validity of Remares' claim could determine what Vibe Micro can receive from its own claim, and therefore, is given standing to object to Remares' claim through the Bankruptcy Code. Vibe Micro also argues it is procedurally acceptable to object to a proof of claim through an adversary proceeding. See *In re Moi*, 381 B.R. 770, 772 (Bankr. S.D. Cal. 2008) ("Nothing in the Rules or Code specifically precludes an objection to claim being brought as an adversary proceeding and the Court can think of no practical reason to so hold. The adversary procedure imposes no additional hardship on the claimant, and, in fact, it affords a claimant heightened due process.")

With respect to the equitable subordination claim, Vibe Micro concedes that usually the Trustee is the one who brings such an action. However, Vibe Micro notes that some courts have held that an unsecured creditor may seek equitable subordination where the Trustee has refused to do so. See *In re Medomak Canning*, 922 F.2d 895, 902 (1st Cir. 1990) ("Generally, an unsecured creditor may assert equitable subordination only where the Trustee has refused to do so and the court grants an unsecured creditor leave to contest a claim."). Still, other courts have held that creditors can initiate actions for equitable subordination without first obtaining the court's authorization to do so. See *Matter of Vitreous Steel Products Co.* 911 F.2d 1223, 1231 (7th Cir. 1990) (individual unsecured creditor has standing to seek equitable subordination of secured creditor's claims because creditor has an interest in subordination separate and apart from estate's interests as a

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whole). The elements that must be alleged to support a claim for equitable subordination are: (1) the claimant must have engaged in inequitable conduct; (2) the misconduct must have resulted in injury to creditors, or conferred some unfair advantage on the claimant; and (3) equitable subordination must not be inconsistent with other provisions of the Bankruptcy Code. *In re First Alliance Mortg. Co.* 471 F.3d 977, 1006 (9th Cir. 2006). Plainly, the complaint alleges all three elements. Vibe Micro also asserts that because of the recency of the complaint, it is possible that the trustee may decide to join this litigation as a plaintiff, which would resolve any question of standing. The court is willing to hear updates on this point.

Regarding the recharacterization claim, Remares suggests that the complaint is deficient because it fails to allege facts which could recharacterize Remares' claim from debt to equity. However, Vibe Micro points out that it is not trying to do that at all. Instead, Vibe Micro argues, it is only trying to persuade the court to recharacterize Remares' claim from secured to unsecured. Vibe Micro notes that circuits have taken different approaches in identifying the legal framework for recharacterization. The seminal Ninth Circuit case on recharacterization is *In re Fitness Holdings Intern., Inc.* 714 F.3d 1141 (9th Cir. 2013). In that case, the Ninth Circuit confirmed that "Supreme Court precedent establishes that...the nature and scope of a right to payment is determined by state law." *Id.* at 1146. In particular, the Ninth Circuit relied on the Supreme Court case *Butner v. United States*, 440 U.S. 48, 55 (1979) for the proposition that "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." In the approach adopted by the Ninth Circuit, in order to determine whether a particular obligation owed by the debtor is a "claim" for purposes of bankruptcy law, it is necessary to determine whether that obligation gives the holder of the obligation a "right to payment" under state law. *Id.* at 1149. Thus, Vibe Micro argues, the relevant claim raised in the complaint is not whether Remares' claim constitutes debt or equity, but whether the "nature and scope" of Remares' claim should be recharacterized

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from being purportedly secured to unsecured in light of the numerous legal deficiencies alleged in the complaint. Although whether Vibe Micro will ultimately prevail in persuading the court to recharacterize Remares' claim from secured to unsecured is yet to be determined, the complaint is likely sufficient to support such a claim for purposes of overcoming the motion to dismiss.

The court is not convinced that Vibe Micro lacks standing to bring its causes of action as a matter of law. Indeed, Vibe Micro has cited several persuasive sources supporting its argument that it does, in fact, have standing through various provisions in the Bankruptcy Code. By contrast the case law relied upon by Remares, and especially those based on the CCP, are less persuasive because they do not discuss the interplay between the CCP and the Bankruptcy Code.

4. Are Vibe Micro's Claims Barred by Statute of Limitations?

Remares argues that Vibe Micro's claims must fail as a matter of law because they are hopelessly barred by the applicable statutes of limitations. Remares again asserts that a sister-state judgment can only be attacked using CCP §1710.40, which gives a judgment debtor a 30-day window to seek vacation of a judgment. Thus, Remares argues, as the complaint alleges that Debtor was served with Notice of Entry of Judgment on May 24, 2019, which would mean that Vibe Micro, though not the judgment debtor, would have had until June 23, 2019 to file its motion to vacate the sister-state judgment, which it obviously did not do as the complaint initiating this adversary proceeding was not filed until February of 2021.

Of course, that is only one version of the facts. Vibe Micro maintains that the clock has not even started as Debtor was never personally served as allegedly required by the Orange County Superior Court. This is obviously a point of factual disagreement, but as this is a motion to dismiss, the court is

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obliged to look at all factual allegations in the light most favorable to Vibe Micro's position as the nonmoving party. As Vibe Micro points out, the outcome of this dispute will hinge on factual questions such as Remares' process server's efforts to personally serve Debtor, the manner in which the documents were "tossed" onto the vehicle, and other factual questions that the court is not disposed or obliged to resolve at this early point in the process. Vibe Micro also points out that it is not merely challenging the validity of the sister-state judgment, it is challenging Remares' assertion of a lien on Debtor's property. As noted above, Vibe Micro argues that Remares' abstract of judgment was defective and not properly recorded. Vibe Micro also argues that there is still a factual dispute over whether the abstract created a lien or merely put a cloud on title. Again, as factual disputes are resolved in Vibe Micro's favor at this point, the complaint, on its face, is likely sufficient to overcome the asserted statute of limitations problem.

5. Are Vibe Micro's Claims Barred by *Rooker-Feldman*?

Remares argues that the *Rooker-Feldman* doctrine deprives this court of jurisdiction over this complaint arguing that Vibe Micro is essentially seeking a de-facto appeal of a valid sister-state judgment. *Rooker-Feldman* prohibits a federal district court (or bankruptcy court) from exercising jurisdiction of a suit that, in effect, constitutes a "de facto appeal" from a state court judgment. *Reusser v. Wachovia Bank, N.A.* 525 F.3d 855, 859-861 (9th Cir. 2008).

Vibe Micro asserts that *Rooker-Feldman* is narrow in scope and does not apply in this case. Vibe Micro cites *In re Lopez*, 367 B.R. 99, 104 (9th Cir. BAP 2007) for the proposition that *Rooker-Feldman* applies to "cases brought 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." Furthermore, a state court

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judgment "entered in a case that falls within federal courts' exclusive jurisdiction is subject to collateral attack in the federal courts." *In re Gruntz*, 202 F.3d 1074, 1079 (9th Cir. 2000). Thus, Vibe Micro argues, because "exclusive jurisdiction" over "core" proceedings is vested in the federal courts, the bankruptcy court is not obligated to grant automatic preclusive effect to state court judgments that implicate core bankruptcy matters. Federal courts have final authority with respect to core proceedings. *Id.* at 1079-1080, 1083-1084. In non-core proceedings that do not implicate substantive rights granted under title 11 or affect the administration of the bankruptcy case, the normal rules of preclusion, including the *Rooker-Feldman* doctrine, apply. *Id.* at 1084. Finally, Vibe Micro asserts that the *Rooker-Feldman* doctrine does not apply where one of the federal litigants was not a party to the underlying state proceedings. *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994).

Vibe Micro argues that *Rooker-Feldman* finds no purchase here because:

1. One of the bankruptcy court litigants, Vibe Micro (and later possibly the Trustee), was not a party to the underlying state proceeding. In Vibe Micro's view, this fact alone prohibits the application of *Rooker-Feldman*. *Johnson v. De Grandy* (1994) 512 U.S. at 1006.
2. This is a "core" proceeding because it seeks relief that only the bankruptcy court can grant (e.g., subordination, recharacterization). Because exclusive jurisdiction over "core" proceedings is vested in the federal courts, the bankruptcy court is not obligated to grant preclusive effect to state court judgments that implicate core bankruptcy matters. *In re Gruntz*, 202 F.3d at 1079.
3. The Complaint is not a "de facto appeal" of the State Court's determinations. Vibe Miro is not alleging error at the state court, but rather that the abstract and recordation are void, voidable, or subject to challenge given Remares' alleged conduct. Vibe Micro alleges that

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Remares deprived Debtor of a fair opportunity to challenge the domestication of the judgment, and thus, following the filing of the petition, the right to challenge the sister-state judgment passed to the trustee and other parties in interest, including Vibe Micro.

4. The Orange County Superior Court has not made any rulings on any of the issues raised in the complaint, despite obviously issuing the Abstract and authorizing Remares to record it. However, the state court has not made any findings on what effect the recordation of the abstract will have. The state court has also not made any findings with respect to statutes of limitations. Finally, the state court has made no findings as to Remares' alleged conduct in obtaining the Abstract, which forms the basis of the equitable subordination claim.

Thus, Vibe Micro persuasively argues that the complaint is not barred by *Rooker-Feldman* because the issues presented in the complaint, though superficially related to the state court action, are substantively different from those raised in the state court.

6. Conclusion

It is important to remember that the court is making no findings of fact at this point. The court's sole obligation here is to review the four corners of the complaint and determine whether the factual allegations, taken as true and with doubts resolved in favor of the nonmoving party, can plausibly support the causes of action alleged in the complaint. That said, this motion is very close, especially on the issue of standing where the court has questions about the Trustee's involvement. There also appear to be numerous points of factual dispute that require final determination, and which will dictate where this case ends up. Thus, Vibe Micro has done just enough through its factual

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allegations and legal authority to persuade the court that it should be allowed to continue in this litigation, which is far from any guarantee that it will ultimately succeed. That determination is for another day.

Finally, despite the *Rooker-Feldman* analysis this court still feels discomfort in what amounts to a collateral attack on the state court judgment based on questions of state law and procedure, so abstention may be appropriate if the proper motion is brought.

Deny

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Remares Global, LLC

Represented By
Alan W Forsley

Plaintiff(s):

Vibe Micro, Inc.

Represented By
Aaron J Malo
Jacqueline A Gottlieb

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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8:19-14912 Igor Shabanets

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Adv#: 8:21-01011 Vibe Micro, Inc. v. Remares Global, LLC

**#14.00 STATUS CONFERENCE RE: Complaint For: (1) Equitable Subordination;
(2) Recharacterization; And (3) Objection To Claim
(cont'd from 5-13-21)**

Docket 1

Tentative Ruling:

Tentative for 5/27/21:

See #13. The parties both speak of summary judgment motions. Should this status conference be continued until a date following the projected filings of same? If not, the following shall apply: complete discovery Nov. 1, 2021; last date for pretrial motions December 10; Pretrial Conference January 20, 2022. This case is uniquely suited for mediation. Should it be ordered?

Appearance: Required.

Tentative for 5/13/21:

Continue to May 27, 2021 @ 11:00 a.m. to coincide with hearing on motion to dismiss.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Remares Global, LLC

Pro Se

Plaintiff(s):

Vibe Micro, Inc.

Represented By
Aaron J Malo

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Jacqueline A Gottlieb

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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8:00-00000

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/1618852487>

ZoomGov meeting number: 161 885 2487

Password: 863907

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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8:21-10645 Agustin Vargas-Gomez and Ma Del Rosario Silva Vargas

Chapter 7

Telephonic Hearing

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA LEASE TRUST, AS SERVICED BY TOYOTA MOTOR CREDIT
CORPORATON
Vs
DEBTORS**

Docket 14

Tentative Ruling:

Tentative for 6/1/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Agustin Vargas-Gomez

Represented By
Marlin Branstetter

Joint Debtor(s):

Ma Del Rosario Silva Vargas

Represented By
Marlin Branstetter

Movant(s):

Toyota Lease Trust, as serviced by

Represented By
Austin P Nagel

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:21-10787 David Johnson Park and Nanya Marie Park

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**SANTANDER CONSUMER USA INC.
Vs.
DEBTORS**

Docket 8

Tentative Ruling:

Tentative for 6/1/21:
Grant. Appearance: optional

Party Information

Debtor(s):

David Johnson Park

Represented By
Scott Dicus

Joint Debtor(s):

Nanya Marie Park

Represented By
Scott Dicus

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Richard A Marshack (TR)

Pro Se

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8:18-13799 Margoth Angelica Esquivel

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(con't from 5-04-21)**

**WILMINGTON SAVINGS FUND SOCIETY, FSB
Vs.
DEBTOR**

Docket 46

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 5-28-21**

Tentative Ruling:

Tentative for 6/1/21:
Status of APO discussions?

Appearance: required

Tentative for 5/4/21:
Status?

Appearance: optional

Tentative for 4/6/21:
Grant. Appearance: optional

Tentative for 3/2/21:
Grant. Appearance: optional

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CONT... Margoth Angelica Esquivel

Chapter 13

Party Information

Debtor(s):

Margoth Angelica Esquivel

Represented By
LeRoy Roberson

Movant(s):

Wilmington Savings Fund Society,

Represented By
Kirsten Martinez

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-11802 Mary Vermiglio Whitney and Jack Douglas Whitney

Chapter 13

#3.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-25-21)

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR
ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-M2
Vs
DEBTORS**

Docket 47

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF A CONTESTED MATTER FILED 5-28-21**

Tentative Ruling:

Tentative for 6/1/21:
Status of APO discussion?

Appearance: required

Tentative for 5/25/21:
Grant. Appearance: optional

Tentative for 4/13/21:
While the court hopes that the loan modification is successful, this is not a
defense to relief of stay. Post confirmation defaults are not well received.

Grant absent agreed APO. Appearance: optional

Party Information

Debtor(s):

Mary Vermiglio Whitney

Represented By

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**CONT... Mary Vermiglio Whitney and Jack Douglas Whitney
Chris T Nguyen**

Chapter 13

Joint Debtor(s):

Jack Douglas Whitney

Represented By
Chris T Nguyen

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-10526 LF Runoff 2, LLC

Chapter 7

#4.00 Motion for Relief from Stay NON BANKRUPTCY FORUM

**HAJP, LLC
Vs.
DEBTOR**

Docket 196

Tentative Ruling:

Tentative for 6/1/21:

It is not at all clear what movant is attempting to accomplish here. This is a Chapter 7 of an LLC. Thus, discharge or dischargeability is not implicated. Moreover, debtor was not a signatory to the contract in question. So, apparently, this state court lawsuit is some kind of attempt to establish alter ego liability. Normally, any such claim would have been asserted via the usual proof of claim. But the claims bar period is already passed. Indeed, the lawsuit was filed well after the bankruptcy petition was filed. It is conceivable that movant could be granted relief of the claims bar, but that has not been shown on this record and would have to be separately established based on admissible evidence. Even if a judgment could be obtained these other issues would still have to be confronted. The court is not inclined to require the trustee to litigate any of that in state court.

Deny.

Appearance: required

Party Information

Debtor(s):

LF Runoff 2, LLC

Represented By
Marc C Forsythe

Movant(s):

HAJP, LLC

Represented By

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CONT... LF Runoff 2, LLC

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Kelly F Ryan

Trustee(s):

Richard A Marshack (TR)

Represented By
David Wood
D Edward Hays

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8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#5.00 Motion For Substantive Consolidation Of Aithinker, Inc. Into Debtor's Bankruptcy Case

Docket 207

Tentative Ruling:

Tentative for 6/1/21:

This is the trustee's motion for substantive consolidation. It is not opposed, but that does not mean it is without issues. Trustee alleges that the entity AIThinker, Inc., is a corporation wholly owned by debtors, which allegedly exists only as a holding company, to hold the stock of CBR Electric, Inc., a failed corporation recently purchased by debtors. Trustee alleges that AIThinker has no other assets and indeed no creditors. While substantive consolidation is a remedy known to the court, Trustee offers little authority or analysis above the very general authority of 11 USC §105. Since the effects of a substantive consolidation are profound, especially as pertains to the interests of any creditors of AIThinker, the court must proceed with some caution. The Trustee never really explains why AIThinker cannot join any lawsuit which the Trustee contemplates as plaintiff without consolidation since presumably Trustee controls the selection of officers and directors. If success were achieved in the litigation then presumably the corporation could be liquidated and all proceeds down streamed. But, again, there is no opposition so the court is not in the business of outlining legal strategies. There is a second and practical issue. Apparently, AIThinker is not yet even in its own bankruptcy proceeding. It needs to be. The court is not inclined to expand already profound questions about the limits of its powers to include the placing under the bankruptcy court's jurisdiction of a separate entity without even the formality of a petition, i.e., in effect an involuntary petition but without even a petition, a notion as yet unrecognized in jurisprudence. The trustee will need to vote the AIThinker shares to file a Chapter 7 petition, and then it may be substantively consolidated with the debtors' estate. The order should direct the UST to utilize steps to insure that the same trustee is appointed.

Party Information

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

Tuesday, June 1, 2021

Hearing Room 5B

11:00 AM

CONT... Hoan Dang and Diana Hongkham Dang

Chapter 7

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Movant(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
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**

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1615307342>

ZoomGov meeting number: 161 530 7342

Password: 628341

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, June 2, 2021

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**

Wednesday, June 2, 2021

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, June 2, 2021

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

**#1.00 POST- CONFIRMATION STATUS CONFERENCE Re: Chapter 11 Voluntary
Petition Individual
(cont'd from 3-31-21)**

Docket 1

Tentative Ruling:

Tentative for 6/2/21:
Nothing to report on the case other than about fees?

Tentative for 3/31/21:
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
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM

8:16-11588 Long-Dei Liu

Chapter 11

**#2.00 STATUS CONFERENCE On Fee Award Issues Remanded By District Court
(cont'd from 3-31-20)**

Docket 0

Tentative Ruling:

Tentative for 6/2/21:

So, what would the parties have this court do pending the appeal?

Tentative for 3/31/21:

Continued to June 2, 2021 @10:00AM

Appearance: optional

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
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM

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 4-28-21)

Docket 7

Tentative Ruling:

Tentative for 6/2/21:
See #4.1

Tentative for 4/28/21:
Continue on same terms pending confirmation hearing.

Tentative for 2/10/21:
Continue on same terms until continue disclosure statement hearing (see # 4.1).

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 @

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

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

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:

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.

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

Wednesday, June 2, 2021

Hearing Room 5B

10:00 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, June 2, 2021

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

**#4.00 Confirmation Hearing Re: Debtor's Second Amended Plan Of Reorganization
(set from disclosure stmt hrg held 4-28-21)**

Docket 207

Tentative Ruling:

Tentative for 6/2/21:
See #4.1

Tentative for 4/28/21:
It appears that stipulations to plan treatment have been obtained from the two main secured creditors. There have been recent pledges of additional capital which assist in the new value question. While still tenuous, there has been an uptick in financial performance per the February MOR lessening the court's concerns on feasibility. No opposition has been filed. Approve and schedule confirmation date.

Party Information

Debtor(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger

Movant(s):

Talk Venture Group, Inc.

Represented By
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger

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

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM

CONT... Talk Venture Group, Inc.

Chapter 11

Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger

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

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#4.10 Motion To Confirm Debtor's Second Amended Chapter 11 Plan Of Reorganization

Docket 231

Tentative Ruling:

Tentative for 6/2/21:

All classes reportedly voted to confirm except Mr. Knirr in Class 1(E). Debtor argues for cramdown in that Knirr is given a \$20,625 secured claim and the balance is treated as unsecured. This is argued to be "fair and equitable" as , in all likelihood, the claim is actually entirely unsecured as it is in sixth position. The court would like to hear argument (and evidence?) as to how this can be relied upon in making the court's findings as this is not formally a §506 motion which is more normally relied upon to make law of the case preliminary to these confirmation questions. This also relates to the ancillary question of whether there can be a §1111(b) election as reportedly Mr. Knirr has attempted but debtor argues is or should be unavailable as the secured portion is , in truth, negligible. Debtor is assisted on these questions in that Mr. Knirr did not apparently file anything to oppose confirmation. No tentative at this time awaiting more of a showing on these points.

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, June 2, 2021

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

**#5.00 Confirmation Hearing Re: Plan of Reorganization
(set from discl stmt hrg held 4-28-21)**

Docket 78

Tentative Ruling:

Tentative for 6/2/21:
See #5.1

Tentative for 4/28/21:
See #3. Approve and schedule confirmation date to coincide with Talk
Venture's.

Tentative for 2/10/21:
There is considerable overlap with the Talk Venture case (see #4.1). Since
feasibility of the Kim matter depends almost entirely on success of Talk
Venture, the two cases should probably travel together. Feasibility is a huge
issue. Since debtor proposes to keep his interest in Talk Venture absolute
priority and new value are also huge issues here, and it would seem that the
new value proposed is just as *de minimus* as in that case. The court does not
believe waiver of administrative claims in this context fits the definition of
"money's worth" at least absent authority to that effect. Continue one more
time to coincide with Talk Venture.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#5.10 Motion To Confirm Debtor's Chapter 11 Plan Of Reorganization

Docket 129

Tentative Ruling:

Tentative for 6/2/21:

All depends on the companion case of Talk Venture. See #4.1 for the court's concerns.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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

Wednesday, June 2, 2021

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 PRE-TRIAL CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))
(set from s/c hrg held 3/3/21)

Docket 1

Tentative Ruling:

Tentative for 6/2/21:
Apparently the parties are still in mediation. Continue about 60 days.

Tentative for 3/3/21:
Status conference continued to:

Deadline for completing discovery: April 15, 2021
Last date for filing pre-trial motions: April 30, 2021
Pre-trial conference on: June 2, 2021 @ 10:00AM
Joint pre-trial order due per local rules.

Tentative for 12/2/20:
Status?

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

Wednesday, June 2, 2021

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

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.

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

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

Wednesday, June 2, 2021

Hearing Room

5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 31, 2019.

Tentative for 8/2/18:

Status conference continued to November 1, 2018 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by October 15, 2018.

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Defendant(s):

DEPARTMENT OF THE

Represented By
Jolene Tanner

UNITED STATES OF AMERICA

Represented By
Jolene Tanner

Plaintiff(s):

Ron S Arad

Represented By
G Bryan Brannan

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

Wednesday, June 2, 2021

Hearing Room 5B

11:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

#7.00 Order To Show Cause Why Chapter 7 Debtor Jee Hyuk Shin Should Not Be Held In Contempt Of The Court's Order On Chapter 7 Trustee Richard Marshack's Motion To Compel
(cont'd from 5-04-21)

Docket 0

Tentative Ruling:

Tentative for 6/2/21:
Status?

Tentative for 5/4/21:
Status. Suggested coercive steps?

Party Information

Debtor(s):

Jee Hyuk Shin

Pro Se

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, June 3, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1609347337>

ZoomGov meeting number: 160 934 7337

Password: 201174

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, June 3, 2021

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**

Thursday, June 3, 2021

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**

Thursday, June 3, 2021

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
(cont'd from 4-29-21)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER ON
AMENDED STIPULATION BETWEEN PARTIES NEWPORT CREST
AND ADAMS URBINATI TO DISMISS ADVERSARY PROCEEDING
WITH PREJUDICE AND FOR CONFIRMATION THAT STATE COURT
JUDGMENT AND FEES AWARDS ENTERED 5-19-21**

Tentative Ruling:

Tentative for 4/29/21:
Settled? Status?

Tentative for 3/25/21:
Status? Is the case settled? Will there be a stipulation?

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

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

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

CONT... Kristine Lynne Adams

Chapter 7

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

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

8:20-13315 Gary T Hernandez

Chapter 7

Adv#: 8:21-01015 Morris v. Hernandez

#2.00 STATUS CONFERENCE RE: Complaint For Determination Of Dischargeability Under 11 USC Section 523(A)(6) Of Debts Of Creditor Victoria Morris

Docket 1

Tentative Ruling:

Tentative for 6/3/21:
Why no status report?

Party Information

Debtor(s):

Gary T Hernandez

Represented By
Michael J Hemming

Defendant(s):

Gary T Hernandez

Pro Se

Plaintiff(s):

Victoria Morris

Represented By
Bruce A Wilson

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

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

#3.00 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 4-01-21 per order approving stip. to extend dates in modified scheduling order entered 3-19-21)

Docket 1

Tentative Ruling:

Tentative for 6/3/21:
Schedule trial about 60 days hence. In person, virtual or hybrid?

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

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

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

Defendant(s):

Michael Edward Castanon	Represented By Rhonda Walker Carlos A De La Paz
BeachPointe Investments, Inc.	Represented By Evan C Borges
George Bawuah	Represented By Evan C Borges
Jerry Bolnick	Represented By Evan C Borges
Jonathan Blau	Represented By Evan C Borges
Joseph Bolnick	Represented By Evan C Borges
Maria Castanon	Pro Se
Kenneth Miller	Represented By Evan C Borges
Peter Van Petten	Represented By Evan C Borges
Raymond Midley	Represented By Evan C Borges
Veronica Marfori	Represented By Evan C Borges
Dennis Hartmann	Represented By Thomas W. Dressler

Plaintiff(s):

Richard A. Marshack	Represented By Sharon Oh-Kubisch Robert S Marticello
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw

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

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#4.00 PRE-TRIAL 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) (cont'd from 4-08-21)

Docket 1

Tentative Ruling:

Tentative for 6/3/21:

Default has been entered. When will a motion for judgment after default be filed?

Tentative for 4/8/21:

Status? Should the answer be stricken?

Tentative for 3/4/21:

Settled? Status?

Tentative for 2/4/21:

Continue to March 4, 2021 @ 10:00AM Plaintiff to give notice.

Appearance: optional

Tentative for 1/7/21:

Continue to hear settlement referred to in December 23, 2020 Notice?

Appearance: required

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

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

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.

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

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01089 Marshack v. Supreme Oil Company

**#5.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims
(set from s/c hrg held on 8-06-20)
(cont'd from 4-01-21 per order granting stip. to cont. the pre-trial conf entered 3-08-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-02-21 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUE THE
PRETRIAL CONFERENCE ENTERED 5-07-21**

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

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

Thursday, June 3, 2021

Hearing Room 5B

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
Courtroom 5B Calendar**

Thursday, June 3, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#6.00 PRE-TRIAL CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(set from s/c hrg held on 9-01-20)
(cont'd from 4/29/21 per order approving stip to cont. dates re: pre-trial stip and pre-trial conf re: mtn for administrative clm by Terrace Tower Orange County, LLC entered 4-05-21)

Docket 571

***** VACATED *** REASON: CONTINUED TO 6-24-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE DATES RE
MOTION FOR ADMINISTRATIVE CLAIM BY TERRACE TOWER
ORANGE COUNTY, LLC PENDING MEDIATION ENTERED 5-19-21**

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.

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

Thursday, June 3, 2021

Hearing Room 5B

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.

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
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, June 8, 2021

Hearing Room 5B

10:30 AM
8:00-00000

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/1614073241>

ZoomGov meeting number: 161 407 3241

Password: 446117

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, June 8, 2021

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.

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**

Tuesday, June 8, 2021

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, June 8, 2021

Hearing Room 5B

10:30 AM

8:17-12477 Geraldine Arguelles

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE
BUNGALOW SERIES IV TRUST, ITS SUCCESSORS AND/OR ASSIGNEES
Vs
DEBTOR**

Docket 149

Tentative Ruling:

Tentative for 6/8/21:
Grant unless current post confirmation or agreed APO.

Party Information

Debtor(s):

Geraldine Arguelles

Represented By
Brad Weil

Movant(s):

U.S. Bank Trust National

Represented By
Erica T Loftis Pacheco

Trustee(s):

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 8, 2021

Hearing Room 5B

10:30 AM

8:19-12629 Eduardo Meza

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 4-20-21)**

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTOR**

Docket 118

Tentative Ruling:

Tentative for 6/8/21:
Status since last hearing?

Tentative for 4/20/21:
Grant unless current post confirmation or agreed APO.

Appearance: optional

Party Information

Debtor(s):

Eduardo Meza

Represented By
Michael F Chekian

Movant(s):

Deutsche Bank National Trust

Represented By
Eric P Enciso
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, June 8, 2021

Hearing Room 5B

10:30 AM

8:19-13886 Gary C. Macrides

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR**

Docket 59

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 5-12-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary C. Macrides

Represented By
Julie J Villalobos

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Nancy L Lee
Dane W Exnowski

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, June 8, 2021

Hearing Room 5B

10:30 AM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-11-21)**

**CTF ASSET MANAGEMENT, LLC
Vs.
DEBTORS**

Docket 82

Tentative Ruling:

Tentative for 6/8/21:
Same tentative, grant unless current or agree APO.

Tentative for 5/11/21:
Grant unless current or stipulated APO.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

CTF Asset Management, LLC, its

Represented By
Reilly D Wilkinson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, June 8, 2021

Hearing Room

5B

10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-23-21)
(cont'd from 4-20-21)**

**WILMINGTON SAVINGS FUNDSOCIETY, FSB
Vs
DEBTORS**

Docket 156

Tentative Ruling:

Tentative for 6/8/21:

Status? This has been continued several times pending some kind of settlement yet nothing is reported. Grant absent agreement or better showing of any reason to continue the stay.

Tentative for 4/20/21:

What is the status the prompted the original continuance? Absent compelling reasons otherwise, grant.

Appearance: required

Tentative for 2/23/21:

This is a Chapter 7, thus "necessary to a reorganization" does not apply within the meaning of §362(d)(2). There also appears to be some equity. The question of relief of stay revolves around whether there is "cause" including lack of adequate protection within the meaning of §(d)(1). According to the Trustee, there is a settlement pending that will yield about \$300,000 for benefit of the estate which requires a transfer of the estate's interest in the property. That sounds good for the estate but there is no suggestion any of

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

Tuesday, June 8, 2021

Hearing Room 5B

10:30 AM

CONT... Hoan Dang and Diana Hongkham Dang Chapter 7

that inures to the benefit of the creditor, so "adequate protection" is not assured. So the court is tasked with deciding whether the equity slice alone amounting to about 18% (assuming these numbers) is enough to afford adequate protection. That is a close question since the usual minimum threshold is about 20%. The court is inclined to continue the stay for a limited period, say 60 days to allow consummation of the pending settlement. More than that should not be expected.

Continue.

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):

Wilmington Savings Fundsociety,

Represented By
Sean C Ferry

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, June 8, 2021

Hearing Room 5B

11:00 AM

8:18-10762 Jack Richard Finnegan

Chapter 7

#6.00 United States Trustee Pursuant To Fed. R. Bank. P. 2004 And 9016 And Local Bankruptcy Rule 2004-1 Authorizing The Examination Of Jack Richard Finnegan And Requiring The Production Of Documents

Docket 333

Tentative Ruling:

Tentative for 6/8/21:

The UST's motion for an Order for Examination is entirely appropriate given the appointed trustee's patient and repeated efforts to obtain the smallest amount of cooperation from the debtor. This case is now over three years old and it needs to move in some kind of constructive direction. The United States Trustee describes the motion as debtor's last chance to show some cooperation so as to retain the possibility of a discharge. The court agrees. Debtor's rambling and intemperate opposition is full of errors and nonsense. This court has never been disqualified by any statute or higher court order. Nor is there any reason whatsoever to believe any such order is forthcoming or should be, nor has debtor identified any cause for such an order. Indeed, this court has endured debtor's baseless ad hominem attacks with patience for three years, but that patience is not unlimited. The major point that debtor is missing is that discharge is a privilege, not a right; it requires some reciprocal cooperation. Among these duties is cooperation with the appointed trustee and forthrightness in testimony under oath about his assets and liabilities. If debtor believes some error was made in this court's orders, his remedy was/is an appeal, not the contumacious failure to cooperate as we have seen to date. The motion is granted and debtor is admonished that continued failure to obey and to cooperate risks not only loss of discharge but other unpleasant remedies as well.

Party Information

Debtor(s):

Jack Richard Finnegan

Pro Se

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, June 8, 2021

Hearing Room 5B

11:00 AM

CONT... Jack Richard Finnegan

D Edward Hays
Laila Masud

Chapter 7

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

Tuesday, June 8, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#7.00 Second Interim and Final Application of EisnerAmper LLP, Financial Advisors to the Official Committee of Unsecured Creditors for Payment of Fees and Reimbursement of Expenses For Period: 10/1/2015 to 3/30/2016

EISNER AMPER LLP, FINANCIAL ADVISOR

FEE: \$74,180.00

EXPENSES: \$31.93

Docket 1816

Tentative Ruling:

Tentative for 6/8/21:
Grant application for allowances. Pro ration and early payment etc. may await the trustee's efforts as portrayed in the early distribution motions.

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

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

Tuesday, June 8, 2021

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

Tuesday, June 8, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#8.00 Second and Final Application of Levene, Neale, Bender, Yoo & Brill L.L.P. for Approval of Fees and Reimbursement of Expenses For Period: 10/15/2015 to 3/30/2016

LEVENE NEALE BENDER YOO & BRILL LLP, DEBTOR'S ATTORNEY

FEE: \$469,649.50

EXPENSES: \$17,681.23

Docket 2026

Tentative Ruling:

Tentative for 6/8/21:
Allow as prayed, see # 7.

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

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

Tuesday, June 8, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrod 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 8, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#9.00 Second Interim And Final Application Of Pachulski Stang Ziehl & Jones LLP For Allowance And Payment Of Compensation And Reimbursement Of Expenses For The Period: June 25, 2015 Through March 30, 2016:

PACHULSKI STANG ZIEHL & JONES LLP, ATTORNEY FOR THE CREDITOR COMMITTEE. Aty, Period: 10/1/2015 to 3/30/2016,

FEE: \$279,230.25

EXPENSES: \$6,418.79

Docket 2033

Tentative Ruling:

Tentative for 6/8/21:
Allow as prayed, see #7.

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

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

Tuesday, June 8, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman
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 8, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#10.00 Second Interim and Final Fee Application of PricewaterhouseCoopers LLP For Payment of Fees and Reimbursement of Expenses, and Request For Allowance and Payment of Administrative Claim For: Period: 10/1/2015 to 12/31/2015

PRICEWATERHOUSECOOPERS LLP, FINANCIAL ADVISOR

FEE: \$35,522.50

EXPENSES: \$0.00

Docket 2034

Tentative Ruling:

Tentative for 6/8/21:
Allow as prayed, see #7.

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

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

Tuesday, June 8, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman
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 8, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#11.00 Proof Of Claim Filed By EPIQ Bankruptcy Solutions, LLC - Claim # 1489 Filed September 8, 2016

Docket 0

Tentative Ruling:

Tentative for 6/8/21:

Why is this done as a proof of claim instead of a fee application?

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
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**

Tuesday, June 8, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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 8, 2021

Hearing Room 5B

11:00 AM

8:21-11049 American CNG Energy, LLC

Chapter 7

**#12.00 Order To Show Cause Why Case Should Not Be Dismissed The Case Was
Filed Without An Attorney
(cont'd from 5-25-21)**

Docket 1

Tentative Ruling:

Tentative for 6/8/21:
Status of debtor's efforts to obtain counsel? Absent convincing reasons,
dismiss.

Tentative for 5/25/21:
Dismiss. Appearance: optional

Party Information

Debtor(s):

American CNG Energy, LLC	Pro Se
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Trustee(s):

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

Wednesday, June 9, 2021

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

**#1.00 CONT Scheduling and case management conference
(cont'd from 12-02-20)**

[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

***** VACATED *** REASON: CONTINUED TO 6-23-21 AT 10:00 A.M.
PER COURT'S OWN MOTION**

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, June 9, 2021

Hearing Room

5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#2.00 CONT Motion for entry of final decrees closing Debtors Chapter 11 cases
(cont'd from 12-02-20 per order apprvng stip. to cont. mtn entered
11-30-20)

[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 6-23-21 AT 10:00 A.M.
PER COURT'S OWN MOTION**

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, June 9, 2021

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

**#3.00 CONT Motion to strike by Shlomo Rechnitz
(cont'd from 12-02-20 per order approving stip. entered 11-17-20)**

[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 6-23-21 AT 10:00 A.M.
PER COURT'S OWN MOTION**

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**

Thursday, June 10, 2021

Hearing Room 5B

10:00 AM
8:00-00000

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/1610731208>

ZoomGov meeting number: 161 073 1208

Password: 278077

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, June 10, 2021

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).

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Chapter

Tentative Ruling:

- NONE LISTED -

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8:19-12795 Lorraina C. Navarette

Chapter 7

Adv#: 8:19-01209 Lindbergh v. Navarette

- #1.00** 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 4-22-21)**

[fr: 1/21/20, 4/7/20, 6/23/20]

Docket 3

Tentative Ruling:

Tentative for 6/10/21:
See #2.

Tentative for 4/22/21:
The court is concerned about the inability to incorporate the defendant's views, and her apparent failure to cooperate. Issue OSC in connection with a continued status conference to be heard in about 45 days, with admonition to her that sanctions including striking the answer, may result for failure to cooperate.

Tentative for 2/11/21:
Why no status report from Plaintiff? That was similarly the case at the last status conference in December, 2020. Dismiss for failure to prosecute.

Tentative for 12/3/20:
Why did Plaintiff not join in the status report? The unilateral report filed by

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CONT... Lorraina C. Navarette Chapter 7

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 -
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Defendant(s):

Lorraina C Navarette	Pro Se
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Plaintiff(s):

Carl Lindbergh	Pro Se
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Trustee(s):

Weneta M Kosmala (TR)	Pro Se
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8:19-12795 Lorraina C. Navarette

Chapter 7

Adv#: 8:19-01209 Lindbergh v. Navarette

#2.00 Show Cause Hearing Re: Failure To Participate In Adversary Proceeding

Docket 1

Tentative Ruling:

Tentative for 6/10/21:

No response has been filed to the court's OSC. Unless plaintiff can report some change from last hearing (a report would have been nice), the answer will be stricken and default entered.

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.A. Kosmala (TR)

Pro Se

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8:20-11611 AEPC Group, LLC

Chapter 11

Adv#: 8:20-01097 AEPC Group, LLC v. SLATE ADVANCE

- #3.00** 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 4-22-21)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
ADVERSARY CASE ENTERED 6-07-21**

Tentative Ruling:

Tentative for 4/22/21:
Continue to accommodate 9019 motion.

Tentative for 2/25/21:
Per request continue to April 22, 2021 @ 10:00 a.m.

Tentative for 1/7/21:
In view of late status report, continue to February 25, 2021 at 10:00 a.m.

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CONT... AEPC Group, LLC

Chapter 11

Appearance: required.

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
Jeffrey S Shinbrot

Defendant(s):

SLATE ADVANCE

Pro Se

Plaintiff(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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8:20-12416 Michele Lynn Stover

Chapter 7

Adv#: 8:21-01013 Bidoglio v. Stover

**#4.00 STATUS CONFERENCE RE: Complaint To Determine Nondischargeability Of Debt
(cont'd from 5-27-21 per another summons issued on 3-26-21)**

Docket 1

Tentative Ruling:

Tentative for 6/10/21:

What is the status following denial of motion for more definite statement?

Continue about 30 days.

Party Information

Debtor(s):

Michele Lynn Stover

Represented By
Christopher J Langley

Defendant(s):

Michele Lynn Stover

Pro Se

Plaintiff(s):

Ana L Bidoglio

Represented By
Henry J Josefsberg

Trustee(s):

Thomas H Casey (TR)

Pro Se

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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 4-22-21 per order appr. stip to con't entered 4-09-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 7-15-21 AT 10:00 A.M.
PER ORDER APPROVING THE STIPULATION TO CONTINUE
PRETRIAL CONFERENCE ENTERED 5-26-21**

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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8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:21-01016 Karen Sue Naylor v. Bayajan Secondary Capital Investments, LLC

#6.00 Plaintiff's Motion For Default Judgment Under LBR 7055-1

Docket 11

Tentative Ruling:

Tentative for 6/10/21:

The court requests guidance on ancillary issues such as whether the voluntary granting of what is apparently a bogus trust deed, now avoided, should defeat the claim of exemption, since it is normally the case that homesteads do not defeat non judicial and voluntary liens. See §522(f)(1)(A).

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Defendant(s):

Bayajan Secondary Capital

Pro Se

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Plaintiff(s):

Karen Sue Naylor

Represented By
Nathan F Smith

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
James C Bastian Jr

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8:18-10582 David R. Garcia

Chapter 7

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

#7.00 Plaintiff's Motion to File First Amended Complaint

Docket 102

Tentative Ruling:

Tentative for 6/10/21:

This is plaintiff, Mandana Jafarinejad's ("Plaintiff") motion to file a first amended complaint pursuant to Fed. R. Civ. P. 15(a). The motion is opposed by defendant/debtor, David R. Garcia ("Defendant").

1. Factual And Procedural Background

In its adopted tentative ruling from April 1, 2021 on Defendant's motion for summary judgment, this court provided a detailed summary of the undisputed factual and procedural history of this case up until that point. That recitation is incorporated herein by reference. The motion for summary judgment was granted in part and denied in part. The court granted summary judgment in Defendant's favor as to Plaintiff's first cause of action seeking nondischargeability under 11 U.S.C. §523(a)(6) for willful and malicious injury relating to unpaid wages purportedly established by a default judgment Plaintiff obtained in state court against a corporate entity, Hans-Drake International Corporation ("Hans-Drake"), which was allegedly at least partially owned by Defendant. The court cited the expiration of the applicable statute of limitations, but also did so without prejudice, leaving the door open for Plaintiff to amend her complaint to allege Defendant's personal liability based on an alter ego theory. Indeed, this court explained:

"On the pleadings as they now stand Defendant's argument based on the statute of limitations as to the First Claim for Relief is well taken. But there might still be a way to revive the claim based upon the Labor Commissioner's order if the issue of alter ego can be properly raised. This court is not prepared to opine as to whether that issue must be

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raised by reopening the Superior court action, or by some new process in equity. However, a due process opportunity of Defendant to meet the factual allegations supporting the theory must be afforded." Adopted Tentative Ruling, p. 10.

The court denied summary judgment citing the existence of disputed issues of material fact as to Plaintiff's second cause of action for nondischargeability under 11 U.S.C. §523(a)(2)(A) based on actual fraud relating to an unpaid loan Plaintiff allegedly made to Defendant. This motion followed.

2. Legal Standards

FRCP 15, made applicable in bankruptcy proceedings through FRBP 7015, places leave to amend after the brief period where a party may amend as a matter of right within the sound discretion of the trial court. *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The purpose of pleadings is to facilitate a proper decision on the merits, and not to erect formal and burdensome impediments in the litigation process. *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973). Unless there is undue prejudice to the opposing party, a trial judge should ordinarily permit a party to amend its complaint. *Id.* FRCP 15's policy of favoring amendments to pleadings should be applied with "extreme liberality." *Webb*, 655 F.2d at 979.

There are four factors that are relevant to whether leave to amend should be granted: (1) undue delay; (2) bad faith or dilatory motive; (3) futility of amendment; and (4) prejudice to the opposing party. *Id.* at 980, citing, *Foman v. Davis*, 371 U.S. 178, 182 (1962). While all these factors are relevant, the crucial factor is the resulting prejudice to the opposing party. *Howey*, 481 F.2d at 1190. Delay alone, no matter how lengthy, is an insufficient ground for denial of leave to amend. *Webb*, 655 F.2d at 980.

3. Should Leave To File A First Amended Complaint Be Granted?

As the case law cited above instructs, there are four factors to weigh,

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but two factors - bad faith and prejudice to the opposing party - are the critical factors. Here, Defendant only argues that one factor is implicated, that amendment of the complaint would be futile. "A motion for leave to amend may be denied if it appears to be futile or legally insufficient. *Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 762, 766 (9th Cir.1986). However, a proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense. *Baker v. Pacific Far East Lines, Inc.*, 451 F.Supp. 84, 89 (N.D.Cal.1978); see generally 3 J. Moore, Moore's Federal Practice ¶ 15.08[4] (2d ed. 1974) (proper test to be applied when determining the legal sufficiency of a proposed amendment is identical to the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6))." *Mill v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (1988).

In support of the futility argument, Defendant notes that the motion asserts three grounds for granting it:

1. Plaintiff argues that the State Court Judgment can be amended at any time under CCP § 187 to properly designate the liable judgment debtor. To amend a judgment under § 187, two requirements must usually be met: (1) that the new party be the alter ego of the old party and (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns. *Levander v. Prober (In re Levander)*, 180 F.3d 1114, 1121 (9th Cir. 1999). Defendant asserts that this court has already heard and dispensed with this argument in the summary judgment hearing. Defendant cites the adopted tentative ruling where the court explained:

"Here, because the State Court Judgment was a default judgment against Hans-Drake, Plaintiff cannot simply add Defendant as a judgment debtor under CCP §187 now to establish the debt against Defendant as if he were Hans-Drake and no claim for relief in this action as currently pled can be read that way. Moreover, this court is in no position to amend the Superior Court's judgment at this late date some six years later; so, to establish direct liability against Defendant she would have to amend her complaint and perhaps also overcome

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statutes of limitation." Adopted Tentative Ruling, p. 6.

Thus, Defendant concludes, Plaintiff is precluded from adding him as a judgment debtor because default judgment under §187 cannot be amended at any time to name non-parties as additional judgment debtors. However, as is plain from the reading of the passage above, although simply adding Defendant as a judgment debtor under state procedure may not be available to Plaintiff, the court clearly did not foreclose other procedural possibilities. Hence, the court's decision to grant summary judgment without prejudice.

2. Defendant asserts that Plaintiffs next argument, that the motion can be amended under FRCP 69(a), is foreclosed by clear black letter law. In support of this argument, Defendant cites *Labertew v. Langemeier*, 846 F.3d 1028, 1033 (9th Cir. 2017) ("Ordinarily a court enforces its own judgments. ... The necessary predicate for application of Federal Rule 69 is a judgment in the federal district court in which execution is sought. Rule 69 is not available to enforce state court judgments in federal court."). Thus, Defendant concludes, because there is no underlying federal court judgment, Rule 69 simply does not apply.

In reply, Plaintiff argues that the Full Faith and Credit Clause in 28 U.S.C. § 1738 and/or 28 U.S.C. section 1963 provides for the registration of a judgment in federal court. Furthermore, Plaintiff argues, as the causes of action implicate matters uniquely allocated to the original subject matter jurisdiction of the bankruptcy court (i.e. issues of dischargeability), this court is clearly vested with jurisdiction to enforce any judgment as relates to discharge of debt. Thus, Plaintiff argues, she can simply "register" her state court judgment into the federal court and add Defendant to the state court judgment, but she cites no direct authority for this proposition.

Plaintiff's argument in this regard seems thin. As was made clear in the adopted tentative ruling, Plaintiff's problem is that the judgment she has is a default judgment, which means if she wants to add Defendant as a judgment debtor, she has to contend with the obvious due process problem as it relates to Defendant. Plaintiff has not cited any direct authority that allows a non-party to be deemed a co-judgment debtor when the judgment debt is the result of a default judgment against a corporate entity. In the cases cited, the

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parties that were allowed to be added as co-judgment debtors based on an alter-ego theory were in cases where the judgment came after the issues were fully litigated and so the later-added judgment debtor's due process rights were adequately observed and protected. Thus, adding Defendant as a judgment Debtor without observing the due process safeguards does not seem to be an available route for Plaintiff.

3. Defendant asserts that Plaintiff's third ground, that the amended complaint is not barred by the Rooker-Feldman doctrine, is not at issue here. Plaintiff was a prevailing party in the state court action, albeit by default judgment, but Rooker-Feldman comes into play when a state court loser attempts to get a more favorable ruling in federal court. The court agrees that Rooker-Feldman is not at issue here.

The court is guided by two major policy goals of this circuit: (1) that extreme liberality is to be applied with respect to granting leave to amend when the request is not in bad faith and will not subject the opposing party to undue prejudice; and (2) fresh starts go to the honest but unfortunate debtor.

Here, as noted, Defendant does not accuse Plaintiff of amending her complaint in bad faith. Nor does he describe how he will be subject to undue prejudice or have his due process rights abridged in any way if an amended complaint is allowed. The court expects that if Plaintiff goes forward with her amended complaint, there will be a delay of some duration in determining Debtor's entitlement to a discharge, but not necessarily an undue delay. At any rate, the case law makes clear that delay of any duration is not sufficient grounds to deny leave to amend. The court is far from certain that an amended complaint would be futile, especially if one views Plaintiff's allegations in the light most favorable to her, as would be the case if this were a motion under Rule 12(b)(6). The court is most concerned with ensuring that both Plaintiff and Debtor are afforded due process and the court sees no risk to either side if the motion is granted. Finally, as noted, the court has an extremely strong interest in ensuring that debtors who come to this court seeking to discharge their debts and get a fresh start are deserving of that fresh start. To that end, the court is empowered to issue any order it deems necessary to further its orders through 11 U.S.C. §105(a). The order on the

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motion for summary judgment explicitly gave Plaintiff an opportunity to amend her complaint:

"The Motion is granted as to the First Claim for Relief (11 U.S.C. § 523(a)(6)) as it is currently pled but without prejudice to a Rule 15 amendment motion to establish Defendant David R. Garcia's alter-ego liability on First Claim through the established liability of Hans Drake." Order Granting in Part And Denying In Part Motion For Summary Judgment, p. 2.

The allegations made by Plaintiff are serious, and if Plaintiff were to prevail, Debtor might very well be unable to discharge the resulting judgment debts. But that decision will be made another day. Of immediate concern is where the First Amended Complaint should be filed and heard as litigation seems necessary to satisfy due process. In Plaintiff's reply, she asks for relief from the automatic stay to add Defendant as a co-judgment debtor in the state court, where she obtained the default judgment against Hans-Drake. Going back to the state court might make sense (maybe that case needs to be reopened?) as the Superior Court is already familiar with the case and the underlying allegations are purely issues of state law. If careful findings are obtained and included in a judgment, this adversary proceeding could be quickly resolved through another Rule 56 motion on collateral estoppel principles. However, relief from the automatic stay is its own motion and would need to be filed separately for, among other reasons, due process.

Grant. The court will hear argument on whether the First Amended Complaint raising alter ego should be paused while a motion or other proceeding to amend the judgment is filed and heard in the state court.

Party Information

Debtor(s):

David R. Garcia

Represented By
Thomas J Tedesco

Defendant(s):

David R. Garcia

Represented By

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Donald W Reid

Chapter 7

Plaintiff(s):

Mandana Jafarinejad

Represented By
Melissa Fulgencio

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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8:18-13894 Daniel J Powers

Chapter 13

Adv#: 8:19-01046 Powers et al v. Alamitos Real Estate Partners II, LP

#8.00 Motion For Leave Extending Time To File Notice Of Appeal

Docket 71

Tentative Ruling:

Tentative for 6/10/21:

This is defendant, Alamitos Real Estate Partners II, L.P.'s ("Alamitos") motion for leave extending time to file notice of appeal. The motion is opposed by the chapter 13 trustee, Amrane Cohen ("Trustee") and by debtors/plaintiffs Daniel and Ellen Powers ("Debtors").

1. Background

The following recitation of facts is taken from Trustee's opposition and does not appear to be disputed.

The instant underlying chapter 13 case was filed on October 24, 2018. Alamitos made its first appearance in the main case on November 12, 2018 by and through their counsel Robert Stroj ("Mr. Stroj") with the filing of a Motion for Relief from Stay [Docket No. 22]. On January 2, 2019, Alamitos filed proofs of claim in the main case as Claims Register Nos. 5 and 6, each naming Mr. Stoj as the person to whom notices should be sent. Mr. Stroj has at all times relevant been the attorney of record for Alamitos in the main case and no substitution of attorney has been filed. The docket in the instant adversary proceeding reflects that the adversary was commenced by the filing of a complaint on March 15, 2019. Alamitos appeared in the adversary by and through the filing of an answer to the complaint filed by Mr. Stroj. At all times relevant Mr. Stroj has been the attorney of record for Alamitos in the adversary proceeding and no substitution of attorney has been filed. The docket in the instant adversary proceeding reflects that the Order Granting Motion for Attorneys' Fees (the "Attorney Fee Order") was entered on April 13, 2021. The Certificate of Notice filed by the Bankruptcy Noticing Center

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reflects that Alamitos was served by electronic noticing to Mr. Stroj and by mail to its address of record, which is apparently the address of the office of Mr. Stroj.

On April 20, 2021, the Trustee filed the Motion for Order for Return of Estate Property Re Alamitos Real Estate Partners II, LP (the "Return of Estate Property Motion") as Docket No. 121 in the main case in which the Trustee sought an order requiring Alamitos to return estate funds in the amount of \$18,134.70. Such a motion was necessary as Alamitos had failed to return said funds after a written demand was made on March 18, 2021. Alamitos did not file opposition to the Return of Estate Property Motion. On May 25, 2021, the court entered the Order Granting Motion for Return of Estate Funds as Docket No. 130. Per the terms of this order, Alamitos must return the funds to the Trustee not later than June 24, 2021. To date, Alamitos has not returned these funds. As of April 28, 2021, Alamitos had not filed a Notice of Appeal regarding the Attorney Fee Order. On May 5, 2021, Alamitos filed the instant motion by and through a different counsel. But no substitution of attorney has been filed by Alamitos. No motion for stay pending appeal has been filed by Alamitos.

2. Legal Standards

Upon entry of a judgment, order, or decree by a bankruptcy court, a party normally has fourteen days to file a notice of appeal. Rule 8002(a). If unable to meet that deadline, a party may move for an extension of time to file the notice of appeal. See Rule 8002(d). While the deadline for filing a request to extend the appeal time is also fourteen days from the entry of the order to be appealed, the Rules contain an additional twenty-one day window (a total of thirty-five days) during which the bankruptcy court may grant a late-filed motion to extend time, but only if the moving party demonstrates that its neglect in not filing a timely motion was "excusable." Rule 8002(d)(1)(B). The party requesting an extension of time bears the burden of proving the existence of excusable neglect. *Key Bar Invs., Inc. v. Cahn (In re Cahn)*, 188 B.R. 627, 631 (9th Cir. BAP 1995).

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Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993) provides guidance for this court in making its determination in what conduct is excusable when missing a deadline to file an appeal. In *Pioneer*, the Supreme Court held that the determination of whether neglect is "excusable" is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* The Pioneer court stated that the following circumstances should be considered:

1) the danger of prejudice to the opposing party;(2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay and Movant's control over the circumstances, and (4) whether the movant acted in good faith. *Id.*

3. Should an Extension Be Granted?

Alamitos argues that there is no danger of prejudice to the opposing parties. Alamitos notes that Debtors' counsel was given a continuance via stipulation to file his motion for attorney's fees after the initial statutory time for filing passed. Alamitos asserts that Debtors were in no rush to move for their fees then and nothing has changed now. If, Alamitos suggests, Debtors are successful defending the appeal they would be awarded more attorney's fees pursuant to the Contracts on which their awards are based. Alamitos concludes that Debtors would not be harmed as the underlying judgment removing the promissory notes and other debt instruments encumbering the debtors is not the subject of this motion nor what is being appealed. This factor does not appear to be hotly contested, and thus weighs in favor of granting the motion.

As to the second factor, Alamitos notes that as of the filing of this Motion only 7 extra days have elapsed since the original deadline to file a Notice of Appeal has occurred. Alamitos argues that this delay is *de minimis* considering the size of the attorney's fee award and its effect upon Alamitos. Furthermore, Alamitos argues, the underlying debt obligations that were the

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basis of the Debtors' adversary complaint were far less than the attorney's fees judgment awarded. Alamitos asserts that Debtors are at no risk of having the underlying judgment extinguishing the debt obligations they voluntarily chose to assume. Again, this factor is not really contested, and thus, weighs in favor of granting the motion.

The third factor addresses the reason for the delay. Alamitos argues that the delay was caused by the unique chaos ensuing from the COVID-19 pandemic. Indeed, Alamitos asserts that it had to shut down operations until just recently in order to comply with the Stay-at-home orders and was, therefore, excusably delayed in finding appellate counsel within the 14-day statutory period. Trustee and Debtors take issue with this reasoning. For example, Trustee points out that Alamitos was, and at all times relevant had been, represented by counsel, Mr. Stroj. Trustee asserts that there is no indication in the docket that Mr. Stroj had withdrawn or had otherwise been substituted out of the case. Trustee argues that the declaration of Mr. Chris Mata, a principal of Alamitos, does not address why its existing counsel could not timely file the notice of appeal nor is there any evidence as to what efforts Alamitos went to secure alternate counsel other than a generalization that no attorneys were available. Trustee also points out that the second reason given, that Mr. Mata had to wait until it was safe to enter his office, strains credibility as the entire trial of the adversary proceeding took place during COVID-19. Trustee asserts that there is no evidence as to why Alamitos could not have promptly requested Mr. Stroj to provide the documents in electronic form or why they could not be electronically downloaded from PACER. Finally, Trustee argues that there is no indication in Mr. Mata's declaration that Alamitos was anything other than fully aware of the deadline for the filing of a notice of appeal. The court agrees that the purported reasons blamed on the pandemic are dubious, at best. The third factor, as Trustee and Debtors argue, weighs against granting the motion for the reasons stated by Trustee.

The final factor of Alamitos' good faith is also contested. Alamitos asserts that its counsel stipulated to an extension of two weeks to allow Debtor's Counsel to file the Motion for Attorney's fees. Here, Alamitos asserts that its counsel submits this motion only 7 days late with adequate justification

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for any delay in filing the notice of appeal. Trustee points out that to the extent Alamitos has failed to comply with the Return of Estate Property order and return the \$18,134.70, Alamitos' hands are not clean and that this factor should weigh against granting the motion. Debtors also assert that Alamitos cannot properly argue that leave to appeal should be granted so that it may contend that the hourly rate set out in the Rights and Responsibilities Agreement Between the Debtor and Attorney ("RARA") is somehow inconsistent with the attorney's fees sought and awarded by post-trial motion. Debtors argue that "It is well established that issues or theories not properly raised or presented in the trial court may not be asserted on appeal and will not be considered by an appellate tribunal." *In re Zavala*, 505 B.R. 268, 273 (C.D. Cal. 2014). Additionally, Debtors argue, even if the above argument could be properly considered on an appeal, it is disingenuous. Debtors argue that an attorney's agreement with a debtor to charge the debtor a maximum rate in a Bankruptcy case has nothing to do with the amount of attorney's fees that are properly awarded pursuant to California law under the lodestar calculations detailed in the moving papers, which Debtors assert, is what this court did. Furthermore, Debtors assert, the RARA expressly does not apply to adversary proceedings such as this one. Finally, Debtors argue, Mr. Mata's conclusory declaration that Alamitos could not find an attorney to file an appeal because of COVID-19 should be rejected. Alamitos not only had an attorney of record at the time, its new counsel's website affirmatively stated he was available.

Again, as none of Trustee's points are contradicted, this factor weighs against granting the motion. Thus, there are two factors in favor of granting the motion and two against. Trustee has offered an alternative that the court should consider imposing. Trustee asserts that if the court is inclined to grant Alamitos' motion to extend the time to file a notice of appeal, the court should condition such relief upon one of the following alternatives: (a) that Alamitos tender to the Trustee the sum of \$196,685.00 to be held pending the resolution of any appeal; or (b) that Alamitos be required to post a bond for the \$196,685.00. A money judgment is normally stayed for 30 days pursuant to FRCP 62(a), and thereafter may be stayed by the filing of an appeal with

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the posting of a bond. See FRCP 62(b) ("At any time after judgment is entered, a party may obtain a stay by providing a bond or other security.") However, as courts in other circuits have questioned the requirement of a bond, the court is unsure whether Trustee's proposed alternative steps are necessary, but it might be argued either one is appropriate for the court's extension of equitable relief. For courts who have decided not to necessarily impose a bond, the main inquiry is focused on the judgment debtor's ability to pay the judgment debt. See e.g. *Xerox Corp. v. JCTB Inc.*, 2019 WL 6000997, at *3 (W.D.N.Y. Nov. 14, 2019) (Denying an unbonded stay because "Defendants have not demonstrated that they have the appropriate funds available for the purposes of paying the Judgment without delay or difficulty.") But the court also observes that there is an outstanding, non-appealed obligation of \$18,134.70. It seems elemental that if Alamitos wants the intervention of equity it should be prepared to do equity. See *Manufacturers' Finance Co. v. McKey*, 294 U.S. 442, 449 (1935) ("The maxim 'he who seeks equity must do equity' presupposes that equitable, as distinguished from legal, rights, substantive or remedial, have arisen from the subject matter in favor of each of the parties[.]").

Grant. The court will hear argument as to whether the order should be made conditional upon Alamitos complying with one of the two suggested alternatives, or at very least payment of its outstanding non-appealed obligation.

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
John C Feely

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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

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8:20-11517 Boyu Liu

Chapter 7

Adv#: 8:20-01129 FS Hawaii Inc v. Liu

- #9.00** Motion Of Global Adult Health Care Services, LLC; Salida Del Sol Cbas; Salida Del Sol Adult Day Health Care, LLC And Zuxi Song To Quash Or Limit Scope Of Subpoena Served Upon JP Morgan Chase Bank N.A.

Docket 48

Tentative Ruling:

Tentative for 6/10/21:

There is no indication that the parties have met and conferred as is required under LBR 7026-1 (c) before calling upon the court to resolve their discovery disputes. The purpose of the rule is to conserve judicial resources by forcing the parties to confront in a systemized way their discovery disputes. It is often the case that disputes can be resolved or at least narrowed if the parties are required to sit down and discuss what can be agreed vs. what must be decided by the court, and not simply argue past each other. This court is not inclined to waive this requirement here.

However, to help the discussions along the court offers a few observations: 1. There is no question that parties have standing to question discovery processes aimed at their own bank accounts. Any contention to the contrary is borderline frivolous; 2. Given the nature of the allegations in this suit, i.e. that the movants are entities that are or were de facto owned and controlled by the debtors, and thus may be undisclosed assets of the estate, it is to be expected that the Plaintiff will cast a wide net in an effort to prove that which may exist in reality notwithstanding camouflage in formalities and labels. This is especially so where, as alleged here, there may have been active efforts to disguise that relationship. Some circumstantial evidence is offered for that conclusion, so the court cannot say on this record that the requests are wildly overbroad or outside of what may be relevant or reasonable. The fact that a relative (who lives in China?) but continues ostensibly to operate these entities after transfer by debtor of shares to her, as alleged here, mitigates the charge that the requests are burdensome or oppressive, or that there are not serious underlying questions that need answering. Such cases are typically "documents cases" i.e. put together like

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a jigsaw puzzle from thousands of seemingly innocuous pieces to make a true picture emerge. This is not to say that counsel cannot, if good faith efforts are made, agree to limit the records or years of lookback, or to obtain records in manageable stages.

But the court will not decide until the parties have done what is required of them under the LBRs, and the parties are reminded that under subsection (c)(4) sanctions can be imposed for failure to cooperate in the requirements of the rule.

Continue about sixty days for compliance with LBRs.

Party Information

Debtor(s):

Boyu Liu

Represented By
Richard G Heston

Defendant(s):

Boyu Liu

Represented By
Richard G Heston

Plaintiff(s):

FS Hawaii Inc

Represented By
Carlos A De La Paz

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:00-00000

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/1612662524>

ZoomGov meeting number: 161 266 2524

Password: 057482

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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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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- 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

8:21-11084 Matias Mendoza

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA MOTOR CREDIT CORPORTION
Vs.
DEBTOR**

Docket 7

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Matias Mendoza

Represented By
Richard L. Sturdevant

Movant(s):

Toyota Motor Credit Corporation,

Represented By
Austin P Nagel

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:18-12373 Naiades Perez Paule

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST,
NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM MORTGAGE
ACQUISITION TRUST
Vs
DEBTOR**

Docket 51

Tentative Ruling:

Movant alleges 4 payments are missed post confirmation. While it is encouraging that debtor might have made the payments for February through April, this alone does not solve the problem. Grant absent motion to modify on file or current status post confirmation. Appearance required.

Party Information

Debtor(s):

Naiades Perez Paule

Represented By
David A Tilem

Movant(s):

Wilmington Savings Fund Society,

Represented By
Eric P Enciso

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:21-11180 Dominic Caruso

Chapter 13

#3.00 Motion for Relief from Stay (REAL PROPERTY)

**AKS EQUITIES, INC.
Vs.
DEBTOR**

Docket 18

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Dominic Caruso

Represented By
Charles J Brash

Movant(s):

AKS Equities, Inc.

Represented By
Valerie J Schratz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:21-11210 Bao Dang Le

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**REAL TIME RESOLUTIONS, INC.
Vs.
DEBTOR**

Docket 11

Tentative Ruling:

Grant. Appearance is optional.

Party Information

Debtor(s):

Bao Dang Le

Pro Se

Movant(s):

Real Time Resolutions, Inc.

Represented By
Renee M Parker

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:21-10941 William Scott Griffiths and Loretta Han Yi Griffiths

Chapter 7

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

**660 BVD, LLC
Vs.
DEBTORS**

Docket 19

***** VACATED *** REASON: CONTINUED TO 7-06-21 AT 10:30 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE MOTION
FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 6-02-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Scott Griffiths

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Loretta Han Yi Griffiths

Represented By
Brian J Soo-Hoo

Movant(s):

660 BVD, LLC

Represented By
Ryan D Zick

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:00-00000

Chapter

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Video/audio web address:

<https://cacb.zoomgov.com/j/1619815952>

ZoomGov meeting number: 161 981 5952

Password: 602112

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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Judge Theodor C. Albert's Cases" on the Court's website at:
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Tentative Ruling:

- NONE LISTED -

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9:30 AM

8:21-10167 Michael Anthony Justo

Chapter 7

**#1.00 Pro se Reaffirmation Agreement Between Debtor and Orange County's Credit Union - [RE: 2016 Toyota Amount: \$21,280.58]
[SC CASE]**

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Anthony Justo	Pro Se
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Trustee(s):

Jeffrey I Golden (TR)	Pro Se
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9:30 AM

8:21-10712 Brad Merrick and Victoria Merrick

Chapter 7

**#2.00 Reaffirmation Agreement Between Debtor and TD Auto Finance LLC
(RE: 2020 Dodge Charger - \$27,446.51) [ES CASE]**

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Merrick

Represented By
Julie J Villalobos

Joint Debtor(s):

Victoria Merrick

Represented By
Julie J Villalobos

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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9:30 AM

8:21-10803 Stephen Gonzalez

Chapter 7

**#3.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation
(RE: Toyota Camry - \$29,786.26) [ES CASE]**

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephen Gonzalez

Represented By
Chris T Nguyen

Trustee(s):

Karen S Naylor (TR)

Pro Se

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9:30 AM

8:21-11024 Antonia Silva

Chapter 7

**#4.00 Reaffirmation Agreement Between Debtor and Capital One Auto Finance
(RE: 2020 Honda Accord - \$34,432.63) [ES CASE]**

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antonia Silva

Represented By
Timothy McFarlin

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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1:30 PM

8:21-10242 Thomas Richard Reynolds

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)**

Docket 29

Tentative Ruling:

Tentative for 6/16/21:
See #s 20-24

Tentative for 4/14/21:
Several promises of follow-up documents have been made by debtor. But
the court has no report of current status.

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

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1:30 PM

8:21-10343 Jeffrey A. Dailey and Tina M. Dailey

Chapter 13

#2.00 Confirmation Of Chapter 13 Plan
(cont'd from 4-14-21)

Docket 14

*** VACATED *** REASON: OFF CALENDAR - CASE CONVERTED
TO CHAPTER 7 ON 5-21-21

Tentative Ruling:

Tentative for 5/19/21:

How does the plan deal with IRS claim in order to effect a feasible plan?

Party Information

Debtor(s):

Jeffrey A. Dailey

Represented By
Christopher J Langley

Joint Debtor(s):

Tina M. Dailey

Represented By
Christopher J Langley

Movant(s):

Jeffrey A. Dailey

Represented By
Christopher J Langley

Tina M. Dailey

Represented By
Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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1:30 PM

8:21-10697 Beth E. Mackey

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 5-19-21)**

Docket 6

Tentative Ruling:

Tentative for 6/16/21:

See Trustee's comments. Plan needs to deal with arrearages on B of A in proper class and for secured claim #13. No tentative.

Tentative for 5/19/21:

Mellon bank objection? Trustee's point about admin claims?

Party Information

Debtor(s):

Beth E. Mackey

Represented By
Thomas J Polis

Movant(s):

Beth E. Mackey

Represented By
Thomas J Polis
Thomas J Polis

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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1:30 PM

8:21-10726 Maria Perez De Reynoso

Chapter 13

**#4.00 Confirmation Of Chapter 13 Plan
(cont'd from 5-19-21)**

Docket 5

Tentative Ruling:

Tentative for 5/19/21:
Trustee's points must be addressed.

Party Information

Debtor(s):

Maria Perez De Reynoso

Represented By
Tyson Takeuchi

Movant(s):

Maria Perez De Reynoso

Represented By
Tyson Takeuchi

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 16, 2021

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1:30 PM

8:21-10755 Jennifer Wu

Chapter 13

**#5.00 Confirmation Of Chapter 13 Plan
(cont'd from 5-19-21)**

Docket 15

Tentative Ruling:

Tentative for 6/16/21:

How do we deal with short notice? Trustee's request for missing documents and evidence of employment must be met. Continue?

Tentative for 5/19/21:

How will debtor address the serious issues and missing documents raised by the trustee?

Party Information

Debtor(s):

Jennifer Wu

Represented By
Christopher C Barsness

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Hearing Room 5B

1:30 PM

8:21-10856 Francisco Beccera Arechiga and Ana Maria Arechiga

Chapter 13

#6.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Francisco Beccera Arechiga

Represented By
Norma Duenas

Joint Debtor(s):

Ana Maria Arechiga

Represented By
Norma Duenas

Movant(s):

Francisco Beccera Arechiga

Represented By
Norma Duenas

Ana Maria Arechiga

Represented By
Norma Duenas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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1:30 PM

8:21-10857 Esther Mejia

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Party Information

Debtor(s):

Esther Mejia

Represented By
Norma Duenas

Movant(s):

Esther Mejia

Represented By
Norma Duenas
Norma Duenas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

1:30 PM

8:21-10923 Bao Dang Le

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - ORDER TO DISMISS
CASE FOR FAILURE TO FILE SCHEDULES, STATEMENTS AND/OR
PLAN ENTERED 5-10-21**

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
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Hearing Room 5B

1:30 PM

8:21-10943 Marina Leonidovna Weahunt

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 0

Tentative Ruling:

Tentative for 6/16/21:

Continue to July 28, 2021 for claims bar and in meantime the plan should be reformed to deal with BMW's point about full valued of collateral as a § 1325(a)(5) 'hanging paragraph' issue.

Party Information

Debtor(s):

Marina Leonidovna Weahunt

Represented By
Daniel King

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 16, 2021

Hearing Room 5B

1:30 PM

8:21-10961 Gerardo Esparza and Brenda R Esparza

Chapter 13

#10.00 Confirmation Of Chapter 13 Plan

Docket 8

Tentative Ruling:

Party Information

Debtor(s):

Gerardo Esparza

Represented By
Gerald S Kim

Joint Debtor(s):

Brenda R Esparza

Represented By
Gerald S Kim

Movant(s):

Gerardo Esparza

Represented By
Gerald S Kim
Gerald S Kim

Brenda R Esparza

Represented By
Gerald S Kim
Gerald S Kim
Gerald S Kim
Gerald S Kim
Gerald S Kim

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 16, 2021

Hearing Room 5B

1:30 PM

8:21-11004 Leticia Nedeau

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 4-28-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leticia Nedeau

Represented By
Trang Phuong 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, June 16, 2021

Hearing Room 5B

1:30 PM

8:21-11011 Fernan Edgardo Lozano

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

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, June 16, 2021

Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

**#13.00 Trustee's Motion to Dismiss Case failure to make plan payments
(cont'd from 5-19-21)**

Docket 52

Tentative Ruling:

Tentative for 6/16/21:
See #14.

Tentative for 5/19/21:
See #20

Tentative for 4/14/21:
See #18.

Tentative for 3/17/21:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 16, 2021

Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

**#14.00 Motion to Modify Plan And/Or Suspend Plan Payments
(cont'd from 5-19-21)**

Docket 56

Tentative Ruling:

Tentative for 6/16/21:

Debtor has not responded to Trustee's comments on the Modification. The unauthorized purchase of a vehicle with family assistance may not itself be fatal, but at least an explanation should be given. Proof of current income is a more substantive issue and since the elements of confirmation, including feasibility, must be met anew with modification, response is required. No tentative.

Tentative for 5/19/21:

Debtors must address Trustee's points.

Tentative for 4/14/21:

In view of trustee's concerns, the court needs to know whether the effort to modify will be prosecuted in which case responses to trustee's points are required.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, June 16, 2021

Hearing Room 5B

3:00 PM

8:18-12488 Kathleen Ohara

Chapter 13

**#15.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 5-19-21)**

Docket 167

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 6-16-21**

Tentative Ruling:

Tentative for 6/16/21:

Are we waiting on an order re modification previously made on condition that certain terms be adopted? Why the delay?

Tentative for 5/19/21:

Grant unless motion to modify on file.

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, June 16, 2021

Hearing Room 5B

3:00 PM

8:19-12629 Eduardo Meza

Chapter 13

#16.00 Trustee's Verified Motion For Dismissing Chapter 13 Proceeding Case Failure To Make Plan Payment
(cont's from 5-19-21)

Docket 123

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 6-14-21**

Tentative Ruling:

Tentative for 5/19/21:

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, June 16, 2021

Hearing Room 5B

3:00 PM

8:19-13917 Hector Aguiluz Pineda

Chapter 13

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

Docket 56

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL ON MOTION FILED 6-07-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Aguiluz Pineda

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, June 16, 2021

Hearing Room 5B

3:00 PM

8:19-13917 Hector Aguiluz Pineda

Chapter 13

#18.00 Debtor's Motion For Hardship Discharge

Docket 59

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAW OF MOTION FOR HARDSHIP DISCHARGE FILED 5-26-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Aguiluz Pineda

Represented By
Christopher J Langley
Michael Smith

Movant(s):

Hector Aguiluz Pineda

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, June 16, 2021

Hearing Room 5B

3:00 PM

8:19-14344 Maria De Lourdes Chavez

Chapter 13

**#19.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 5/19/21)**

Docket 43

Tentative Ruling:

Tentative for 6/16/21:
Continue to coincide with modification hearing July 28, 2021.

Tentative for 5/19/21:
Grant unless current or other curative motion on file.

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
Courtroom 5B Calendar**

Wednesday, June 16, 2021

Hearing Room 5B

3:00 PM

8:21-10242 Thomas Richard Reynolds

Chapter 13

#20.00 Objection to the Proof of Claim of LVNV Funding, LLC filed as Proof of Claim #5

Docket 72

Tentative Ruling:

Tentative for 6/16/21:
Moot by withdrawal of claim.

Party Information

Debtor(s):

Thomas Richard Reynolds

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 16, 2021

Hearing Room 5B

3:00 PM

8:21-10242 Thomas Richard Reynolds

Chapter 13

#21.00 Objection to the Proof of Claim of Anna Padilla filed as Proof of Claim # 6

Docket 74

Tentative Ruling:

Tentative for 6/16/21:
Discharged in previous bankruptcy? Sustain.

Party Information

Debtor(s):

Thomas Richard Reynolds

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 16, 2021

Hearing Room 5B

3:00 PM

8:21-10242 Thomas Richard Reynolds

Chapter 13

#22.00 Objection to the Proof of Claim of Denise Almanza filed as Proof of Claim #7

Docket 75

Tentative Ruling:

Tentative for 6/16/21:
See #21. Same.

Party Information

Debtor(s):

Thomas Richard Reynolds

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 16, 2021

Hearing Room 5B

3:00 PM

8:21-10242 Thomas Richard Reynolds

Chapter 13

#23.00 Objection to the Proof of Claim of Jessie Almanza filed as Proof of Claim #8

Docket 76

Tentative Ruling:

Tentative for 6/16/21:
See #21. Same.

Party Information

Debtor(s):

Thomas Richard Reynolds

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 16, 2021

Hearing Room 5B

3:00 PM

8:21-10242 Thomas Richard Reynolds

Chapter 13

#24.00 Objection to the Proof of Claim of John Padilla filed as Proof of Claim #9

Docket 77

Tentative Ruling:

Tentative for 6/16/21:
See #21. Same.

Party Information

Debtor(s):

Thomas Richard Reynolds

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Thursday, June 17, 2021

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

#1.00 Defendant's Motion In Limine No 1 To Exclude All Direct Testimony From Any Witnesses In Support of Plaintiff's Case-in-Chief at Trial Other Than Tracy Marx and Lonnie Reynolds

Docket 154

Tentative Ruling:

Tentative for 6/17/21:

In this motion *in limine* the defendant seeks to exclude testimony of witnesses listed in the pretrial stipulation but not now supported by a declaration containing the direct testimony. Mr. Reynolds and the plaintiff have apparently submitted theirs, albeit reportedly a bit late. Those will be permitted. Plaintiff argues difficulty in obtaining the cooperation of the others, and tries to argue that the hearsay objection could be overcome in any case. But admissibility or lack thereof is only part of the equation. The rule exists in order that the parties be well acquainted with the exact testimony of opposing witnesses in order to be prepared to maximum degree, and in order that the trial proceed efficiently. Nothing offered by plaintiff in argument satisfies the court that it should bend the rule here, with one possible exception. Mr. Pease is identified as defendant's former lawyer and so can be realistically called as a hostile witness, which the rules allow absent a declaration. If it develops that Mr. Pease is not truly hostile, the court may entertain defendant's later motion to strike for that reason.

Grant in part, deny in part.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

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

Thursday, June 17, 2021

Hearing Room 5B

10:00 AM

CONT... Stacey Lynn Schmidt

Chapter 7

Plaintiff(s):

Tracy M Marx

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, June 17, 2021

Hearing Room 5B

10:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

#2.00 Defendant's Motion In Limine No. 2 To Exclude All Factual Allegations, Testimony and Evidence Outside the Scope of the Pre-Trial Stipulation and Order Therein

Docket 155

Tentative Ruling:

Tentative for 6/17/21:

In this second motion *in limine* defendant attempts to exclude some proffered testimony on the grounds that it is outside the statements of the case found in the pretrial statement, and/or such testimony would in any case be inadmissible as either irrelevant or hearsay, or both. Neither objection is well founded. First, relevancy is far wider than is indicated in the motion and this motion is in any event an inappropriate way to attempt to exclude evidence on that basis. Objections at trial are for that purpose. As noted, hearsay has numerous exceptions including the omnibus exception found at FRE 807, and the court is not inclined to attempt to rule on this very preliminary and incomplete record. On the other ground, the court agrees with plaintiff that the purpose of a joint pretrial stipulation is to make the trial as efficient as is reasonably possible by focusing on the issues. It is not a trap to exclude every small item or inconsistency that may not have been addressed specifically or completely in the stipulation. Defendant's points fall within the latter category. The court is equipped to weigh the significance of any specific bit of testimony in determining whether it supports the charging allegations, and it is not in the interest of justice to try to anticipate every such thing in advance.

Deny.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

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

Thursday, June 17, 2021

Hearing Room 5B

10:00 AM

CONT... Stacey Lynn Schmidt

Chapter 7

Defendant(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Plaintiff(s):

Tracy M Marx

Represented By
Joseph A Weber
Fritz J Firman

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, June 17, 2021

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 from p/t hrg held from 3-26-20)
(cont'd from 2-18-21 per order granting mtn to con't trial pursuant to local rule 9013-1(m) entered 1-27-21)****

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.

Please be advised that CourtCall has announced reduced 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**

Thursday, June 17, 2021

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**

Thursday, June 17, 2021

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**

Friday, June 18, 2021

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)
(cont'd from 2-19-21 per order granting mtg to cont. trial pursuant to local rule 9013-1(m) entered 1-27-21)**

Docket 83

***** VACATED *** REASON: RE-SCHEDULED TO 6-25-21 AT 10:00 A.M. PER COURT OWN MTN**

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, June 22, 2021

Hearing Room

5B

10:30 AM

8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person after July 12 (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1611355106>

ZoomGov meeting number: 161 135 5106

Password: 341391

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828

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

Tuesday, June 22, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

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: <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, June 22, 2021

Hearing Room 5B

10:30 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, June 22, 2021

Hearing Room 5B

10:30 AM

8:20-10045 Young Ha Kim

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**ACAR LEASING LTD
Vs.
DEBTOR**

Docket 71

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY FILED 6-04-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Young Ha Kim

Represented By
Christian T Kim

Movant(s):

ACAR Leasing LTD d/b/a GM

Represented By
Sheryl K Ith

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Tuesday, June 22, 2021

Hearing Room 5B

10:30 AM

8:21-11218 Sammy Dale James and Elizabeth Kathryn James

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**CAB WEST, LLC
Vs.
DEBTORS**

Docket 7

Tentative Ruling:

Tentative for 6/22/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Sammy Dale James

Represented By
Bert Briones

Joint Debtor(s):

Elizabeth Kathryn James

Represented By
Bert Briones

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Tuesday, June 22, 2021

Hearing Room 5B

10:30 AM

8:11-13618 James E Tuley and Susan B Tuley

Chapter 11

#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-11-21)

**WELLS FARGO BANK, N.A.
Vs.
DEBTORS**

Docket 179

***** VACATED *** REASON: CONTINUED TO 8-10-21 AT 10:30 A.M.
PER ORDER ON STIPULATION TO CONTINUE THE HEARING ON
MOTION FOR RELIEF FROM STAY ENTERED 6-21-21**

Tentative Ruling:

Tentative for 6/22/21:
APO status?

Tentative for 5/11/21:
No service on committee, UST or twenty largest creditors. Continue as to
those parties.

Appearance: optional

Party Information

Debtor(s):

James E Tuley

Represented By
Bryan L Ngo

Joint Debtor(s):

Susan B Tuley

Represented By
Bryan L Ngo

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

Tuesday, June 22, 2021

Hearing Room 5B

10:30 AM

CONT... James E Tuley and Susan B Tuley

Chapter 11

Movant(s):

Wells Fargo Bank, N.A., as Trustee

Represented By
Theron S Covey
Sean C Ferry

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

Tuesday, June 22, 2021

Hearing Room 5B

10:30 AM

8:16-12695 Adrienne Y. Turner

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 5-11-21)**

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 89

Tentative Ruling:

Tentative for 6/22/21:
Grant absent stipulated APO.

Tentative for 5/11/21:
Grant absent stipulated APO.

Party Information

Debtor(s):

Adrienne Y. Turner

Represented By
Joseph A Weber

Movant(s):

Wells Fargo Bank, National

Represented By
Eric P Enciso
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, June 22, 2021

Hearing Room 5B

10:30 AM

8:19-12479 Judie Kay Brust

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
[RE: 12791 Sylvan St, Garden Grove, CA 92845]

**CHAMPION MORTGAGE COMPANY
Vs.
DEBTOR**

Docket 42

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION FOR RELIEF FROM AUTOMATIC STAY
FILED 5-27-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Judie Kay Brust

Represented By
Christopher J Langley

Movant(s):

Champion Mortgage Company

Represented By
Sean C Ferry
Jenelle C Arnold
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, June 22, 2021

Hearing Room 5B

10:30 AM

8:19-12479 Judie Kay Brust

Chapter 13

**#6.00 Motion for relief from the automatic stay REAL PROPERTY
[RE: 12791 Sylvan St, Garden Grove, CA 92845]**

**CHAMPION MORTGAGE COMPANY
Vs.
DEBTOR**

Docket 43

Tentative Ruling:

Tentative for 6/22/21:
Grant absent post confirmation current status or agreed APO.

Party Information

Debtor(s):

Judie Kay Brust

Represented By
Christopher J Langley

Movant(s):

Champion Mortgage Company

Represented By
Sean C Ferry
Jenelle C Arnold
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, June 22, 2021

Hearing Room 5B

10:30 AM

8:21-10734 Leonardo Daniel Bucio Reyes

Chapter 7

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

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
Vs
DEBTOR**

Docket 9

Tentative Ruling:

Tentative for 6/22/21:
Grant, recovery from insurance proceeds only.

Appearance: optional

Party Information

Debtor(s):

Leonardo Daniel Bucio Reyes

Represented By
Steven A. Alexander

Movant(s):

State Farm Mutual Automobile

Represented By
Richard L Mahfouz

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

**#8.00 Motion For Substantive Consolidation Of Aithinker, Inc. Into Debtor's Bankruptcy Case
(cont'd from 6-01-21)**

Docket 207

Tentative Ruling:

Tentative for 6/22/21:
Grant.

Tentative for 6/1/21:

This is the trustee's motion for substantive consolidation. It is not opposed, but that does not mean it is without issues. Trustee alleges that the entity AIThinker, Inc., is a corporation wholly owned by debtors, which allegedly exists only as a holding company, to hold the stock of CBR Electric, Inc., a failed corporation recently purchased by debtors. Trustee alleges that AIThinker has no other assets and indeed no creditors. While substantive consolidation is a remedy known to the court, Trustee offers little authority or analysis above the very general authority of 11 USC §105. Since the effects of a substantive consolidation are profound, especially as pertains to the interests of any creditors of AIThinker, the court must proceed with some caution. The Trustee never really explains why AIThinker cannot join any lawsuit which the Trustee contemplates as plaintiff without consolidation since presumably Trustee controls the selection of officers and directors. If success were achieved in the litigation then presumably the corporation could be liquidated and all proceeds down streamed. But, again, there is no opposition so the court is not in the business of outlining legal strategies. There is a second and practical issue. Apparently, AIThinker is not yet even in its own bankruptcy proceeding. It needs to be. The court is not inclined to expand already profound questions about the limits of its powers to include the placing under the bankruptcy court's jurisdiction of a separate entity without even the formality of a petition, i.e., in effect an involuntary petition but without even a petition, a notion as yet unrecognized in jurisprudence. The trustee will

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

CONT... **Hoan Dang and Diana Hongkham Dang** **Chapter 7**

need to vote the AIThinker shares to file a Chapter 7 petition, and then it may be substantively consolidated with the debtors' estate. The order should direct the UST to utilize steps to insure that the same trustee is appointed.

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):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros
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, June 22, 2021

Hearing Room 5B

11:00 AM

8:18-13608 Darren Dean McGuire

Chapter 7

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

JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY LLP, ACCOUNTANT FOR TRUSTEE

Docket 179

Tentative Ruling:

Tentative for 6/22/21:
Allow as prayed. Appearance optional.

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, June 22, 2021

Hearing Room

5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#10.00 Second Interim Application For Compensation And Reimbursement Of Expenses
For The Period of June 1, 2016 through and Including March 31, 2021

GROBSTEIN TEEPLE, LLP AS ACCOUNTANTS FOR THE CHAPTER 7 TRUSTEE

FEE:	\$347,956.50
EXPENSES	\$303.94

Docket 1865

Tentative Ruling:

Tentative for 6/22/21:

The court is aware of a letter from Howard Randall, Trustee of the Kimberly Randall Irrevocable Trust (which purportedly holds Point Center Mortgage Backed Promissory Notes). Although dated June 14, letter was not received by the court until the day before the hearings on these matters. The court interprets the letter as an omnibus objection to the fee applications (Cal. ##10 -12), but notes that the letter does not contain any substantive or procedural objections. Rather, the letter mainly asserts that there is an inequity in approving the fee applications before the Trust has had an opportunity to review pertinent financial records. Unfortunately, because the letter was received and filed late, the applicants have not had adequate time to respond to this letter.

Allow fees as prayed for all related applications on this calendar.

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe
Jeffrey S Benice

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Carlos F Negrete - INACTIVE -

Trustee(s):

Howard B Grobstein (TR)

Represented By

Rodger M. Landau

Roye Zur

Kathy Bazoian Phelps

John P. Reitman

Robert G Wilson - SUSPENDED -

Monica Rieder

Jon L. Dalberg

Michael G Spector

Peter J. Gurfein

Jack A. Reitman

Thomas A Maraz

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#11.00 First Interim Application For Allowance And Payment Of Fees and Expenses For The Period From August 21, 2013 through April 15, 2021:

LANDAU LAW LLP, TRUSTEE'S ATTORNEY

FEE:	\$4,457,573.50
EXPENSES:	\$139,035.52

Docket 1866

Tentative Ruling:

Tentative for 6/22/21:
See #10.

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

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Jack A. Reitman
Thomas A Maraz

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

#12.00 Motion For An Order Approving The Chapter 11 Examiner's Fees and Costs
For Period: 4/10/2013 to 4/30/2021:

ROBERT P. MOSIER, EXAMINER:

FEE:	\$58,115.80
EXPENSES:	\$734.00

Docket 1871

Tentative Ruling:

Tentative for 6/22/21:
See #10.

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

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Jack A. Reitman
Thomas A Maraz

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

Tuesday, June 22, 2021

Hearing Room 5B

11:00 AM

8:14-15355 Tomas Popovic

Chapter 7

#13.00 Order To Show Cause Re: Contempt Why The Royalty Network, Inc. Should Not Be Held In Contempt For Violating The Discharge Injunction Of 11 USC Section 524
(cont'd from 5-04-21)

Docket 26

Tentative Ruling:

Tentative for 6/22/21:

The court cannot tell on this record if 11 U.S.C. §365(n)(1) and (2) [debtor as licensor of intellectual property] have any application. Also, the court cannot discern whether there was an absolute assignment [see ¶ 2.1 of the Agreement] which may have some bearing. Apparently, Debtor is claiming \$13,544 in wrongfully collected royalties in the form of an offset post-petition against a prepetition debt allegedly owed by Debtor. The additional damages of \$100,000 for interference and \$25,000 for emotional damages is not supported by much if any evidence, and therefore cannot be awarded based on this record as speculative. However, Debtor may attempt to better support such an award with evidence, but it is not awarded at this time. An award of \$13,544 may be appropriate depending on the §365(n) issue. No tentative absent better showing and explanation.

Tentative for 5/4/21:

Assess appropriate sanctions.

Party Information

Debtor(s):

Tomas Popovic

Represented By
Bret D Lewis

Trustee(s):

John M Wolfe (TR)

Pro Se

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

Wednesday, June 23, 2021

Hearing Room

5B

10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person after July 12 (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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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/1618899424>

ZoomGov meeting number: 161 889 9424

Password: 566747

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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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 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, June 23, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 4-07-21)**

Docket 1

Tentative Ruling:

Tentative for 6/23/21:
Continue to adequacy of disclosure or confirmation hearing.

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

Tentative for 2/26/20:
The court will, at debtor's request, refrain from setting deadlines at this time in

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

CONT... Bridgemark Corporation

Chapter 11

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, June 23, 2021

Hearing Room 5B

10:00 AM

8:21-11152 Ultimate Towing & Recovery, LLC

Chapter 11

**#2.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition
Individual. LLC**

Docket 1

Tentative Ruling:

Tentative for 6/23/21:

Will there be a request for order to combine disclosure with the plan and to specify that 1125 does not apply? See §§ 1181(b) and 1187(c). Are we ready to set confirmation hearing?

Party Information

Debtor(s):

Ultimate Towing & Recovery, LLC

Represented By
Michael R Totaro

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#3.00 Motion For Order Dismissing Bankruptcy Case And Authorizing Payment Of All Remaining Claims Against The Estate

Docket 93

Tentative Ruling:

Tentative for 6/23/21:
Grant.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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

Wednesday, June 23, 2021

Hearing Room

5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#4.00 First And Final Fee Application For Compensation For Approval Of Compensation And Reimbursement Of Expenses For The Period From January 6, 2021 through and including June 23, 2021

SNELL & WILMER L.L.P., GENERAL BANKRUPTCY COUNSEL

FEE:	\$163,277.10
EXPENSES:	\$6,541.92

Docket 89

Tentative Ruling:

Tentative for 6/23/21:

Allow as prayed. Payment to accompany other disbursements from trust account.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

8:21-10668 Expo Marketing Group, LLC, a Delaware limited liab

Chapter 11

#5.00 Motion for Order Dismissing Case, Authorizing Payments and With All Orders and Agreements Remaining in Full Force and Effect

Docket 40

Tentative Ruling:

Tentative for 6/23/21:
Grant.

Party Information

Debtor(s):

Expo Marketing Group, LLC, a

Represented By
Marc C Forsythe

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

8:19-11153 Harry L Morris, Jr.

Chapter 11

#6.00 Motion For Approval Of Chapter 11 Disclosure Statement And Copy Of Plan Of Reorganization
(cont'd from 4-21-21)

Docket 159

***** VACATED *** REASON: CONTINUED TO 8/04/2021 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE THE HEARING ON
THE DEBTOR-IN-POSSESSION'S DISCLOSURE STATMENT ENTERED
6-07-21**

Tentative Ruling:

Tentative for 4/21/21:

Given that the disclosure statement was amended only on April 15, it would appear that a continuance is in order. It also seems that this case is likely to come down to a dispute over the interplay between payment of community debts, payment of equalization, homestead and characterization of certain claims. At the very least the nature of the dispute should be clearly set forth in the disclosure statement and discussion had over what happens if the court ends up ruling against debtor in whole or in part.

Continue.

Tentative for 2/10/21:

The DS has some problems as Debtor seems to admit, especially surrounding the details of the proposed sale. In the reply, Debtor states that the DS will be amended to include details of a pending (?) sale of his real property.

Debtor also concedes that amendment to the DS is required as to the Buncher claim . Debtor also disputes the allegation of fraud in connection with the MORs because he claims that his monthly alimony payments are deducted before funds are added to his DIP account. It is not clear from Ms. Morris' opposition whether she is conceding that Debtor is current on his monthly alimony obligations. Debtor also claims that the opposition confuses

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

CONT... **Harry L Morris, Jr.**

Chapter 11

“impaired” and “disputed” when discussing Class 2 creditors such as Deutsche Bank and County of Orange. To be clear, Debtor is asserting that those claims are disputed.

In sum, the DS requires amendment, as Debtor seems to concede. The sale of real property that the entire plan depends upon has not been consummated, despite an alleged sale contract being in place. As the U.S. Trustee points out, there is no timeline for the sale of the property. Some of Mrs. Morris’ opposition raise issues of confirmation, not necessarily of adequate disclosure. Still, when the DS is amended, Debtor would do well to take some of Mrs. Morris’ comments to heart and address them, particularly, the community property/community debt portion of the opposition. As the U.S. Trustee points out, the feasibility of the plan is open to question. Thus, the hearing on the adequacy of the DS should be continued to allow for a sale to be actually completed (or at least imminent) and for Debtor to address the concerns put forth by the U.S. Trustee and Mrs. Morris. It appears that a motion to approve the sale of real property has been filed and is on calendar for 3/10/21. Continue to either that date or shortly thereafter to allow corrections and supplements to DS.

Party Information

Debtor(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

Movant(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

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

Wednesday, June 23, 2021

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

**#7.00 CONT Scheduling and case management conference
(cont'd from 6-09-21 per court's own mtn)**

[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 6/23/21:
Why no status report?

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, June 23, 2021

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#8.00 Motion For Approval Of Stipulation To Continue Hearing On Motion For Entry Of Final Decree Closing Debtors' Chapter 11 Cases (related documents 2752 Motion to Continue/Reschedule Hearing)

Docket 2769

***** VACATED *** REASON: OFF CALENDAR PURSUANT TO THE ORDER GRANTING STIPULATION ENTERED 6-04-21**

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, June 23, 2021

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#9.00 CONT Motion for entry of final decrees closing Debtors Chapter 11 cases
(cont'd from 6-09-21 per court's own mtn)

[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 1-26-22 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON SHLOMO RECHNITZ'S MOTION TO STRIKE ENTERED 6-04-21

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, June 23, 2021

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

**#10.00 CONT Motion to strike by Shlomo Rechnitz
(cont'd from 6-09-21 per court's own mtn)**

[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 1-26-22 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION ENTERED 6-04-21**

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, June 23, 2021

Hearing Room 5B

10:00 AM

8:14-11335 Plaza Healthcare Center LLC

Chapter 11

#11.00 Motion To Approve Stipulation To Continue Hearing On Motion To Strike by Shlomo Rechnitz

Docket 2766

*** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION TO CONTINUE HEAIRNG ON SHLOMO RECHNITZ'S MOTON TO STRIKE ENTERED 6-04-21

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**

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person after July 12 (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1608214713>

ZoomGov meeting number: 160 821 4713

Password: 679195

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <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**

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

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
(cont'd from 12-10-20)**

Docket 1

Tentative Ruling:

Tentative for 6/24/21:

Deadline for completing discovery: November 1, 2021

Last date for filing pre-trial motions: December 10, 2021

Pre-trial conference on: December 23, 2021 @ 10:00AM

Joint pre-trial order due per local rules.

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 -

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

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 -
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Plaintiff(s):

Richard A Marshack	Represented By Michael G Spector
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Trustee(s):

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

**#2.00 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
(cont'd from 4-22-21 per order approving stip. to cont. s/c entered 4-19-21)
[another summons issued on 12-30-20 with the same s/c date per Amna]
[another summons issued on 1-11-21 with same s/c date per Amna]**

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-24-21 AT 10:00 A.M.
PER ORDER RE: STIPULATION TO CONTINUE THE STATUS
CONFERENCE SET FOR JUNE 24TH, 2021 ENTERED 6-23-21**

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.

Party Information

Debtor(s):

Jee Hyuk Shin

Pro Se

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

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
Insook Shin	Pro Se
Jeemin Shin	Pro Se
Mini Million Corporation	Pro Se
Theodore Ebel	Pro Se
Mojerim, Inc.	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
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01131 OneSource Distributors, LLC v. Dang et al

#3.00 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)
(cont'd from 3-22-21 per order approving stip. to cont. s/c entered 4-20-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-12-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
RESPOND TO THE COMPLAINT ENTERED 6-11-21**

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

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... Hoan Dang

Arturo M Cisneros
James C Bastian Jr

Chapter 7

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01133 Toll Bros, Inc. v. Dang et al

**#4.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(cont'd from 4-29-21 per order approving stip. to cont s/c entered 4-16-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-12-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
RESPOND TO THE COMPLAINT ENTERED 5-21-21**

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

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

Thursday, June 24, 2021

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, June 24, 2021

Hearing Room 5B

10:00 AM

8:20-12166 Stephen F. Sturm

Chapter 13

Adv#: 8:20-01173 Sturm v. Dan Cook Inc

**#5.00 STATUS CONFERENCE RE: Complaint To Determine Nature, Extent And Priority Of Lien; Declaratory Relief; Disallowance Of Claim
(cont'd from 3-04-21 per order approving stip. re: mediation of disputes, tolling of responses dates and continuation of s/c entered 1-26-21)**

Docket 1

Tentative Ruling:

Tentative for 6/24/21:

In view of the continuing stipulated stay, continue status conference to August 12, 2021. It is expected that a responsive pleading will by then be on file as the extension lapses July 7, 2021.

Party Information

Debtor(s):

Stephen F. Sturm

Represented By
Joseph A Weber

Defendant(s):

Dan Cook Inc

Pro Se

Plaintiff(s):

Stephen F. Sturm

Represented By
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

8:20-12910 Michelle Lynn Light

Chapter 7

Adv#: 8:21-01006 King City Entertainment v. Baker, II et al

**#6.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523(a)(2)(A) and 523(a)(4)
(cont'd from 4-22-21)**

Docket 1

Tentative Ruling:

Tentative for 6/24/21:
Default entered April 26. Status of motion for entry of judgment? Court appearance for that is optional as a judgment can be supported by affidavit.

Tentative for 4/22/21:
Why no status report?

Party Information

Debtor(s):

Michelle Lynn Light

Represented By
Richard G Heston

Defendant(s):

Joseph Leon Baker II

Pro Se

Michelle Lynn Light

Pro Se

Joint Debtor(s):

Joseph Leon Baker II

Represented By
Richard G Heston

Plaintiff(s):

King City Entertainment

Represented By
Andrew D. Weiss

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... Michelle Lynn Light

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:21-01016 Karen Sue Naylor v. Bayajan Secondary Capital Investments, LLC

#7.00 STATUS CONFERENCE RE: Complaint: (1) To Avoid Fraudulent Transfer Pursuant To 11 USC Section 548(a)(1)); And (2) To Recover And Preserve Fraudulent Transfer Pursuant To 11 USC Sections 550 And 551

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AND JUDGMENT IN FAVOR OF CHAPTER 7 TRUSTEE, KAREN SUE NAYLOR ENTERED 6-10-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hoan Dang

Represented By
James C Bastian Jr

Defendant(s):

Bayajan Secondary Capital

Pro Se

Joint Debtor(s):

Diana Hongkham Dang

Represented By
James C Bastian Jr

Plaintiff(s):

Karen Sue Naylor

Represented By
Nathan F Smith

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, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... Hoan Dang

Chapter 7

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

8:17-12900 Harv Wyman

Chapter 7

Adv#: 8:19-01171 NAYLOR v. THE EVERGREEN ADVANTAGE, LLC et al

#8.00 PRE-TRIAL 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)
(set from s/c hrg held on 2-27-20)
(con't from 4-22-21 per order appr. stip. ent. 4-13-21)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED
PER ORDER APPROVING MOTION TO COMPROMISE AND SALE OF
PROPERTY OF THE ESTATE ENTERED 5-12-21 - SEE ORDER
ENTERED IN THE MAIN CASE # SA 17-BK 12900 TA**

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

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... Harv Wyman Chapter 7

RUFFIN ROAD VENTURE LOT 6 Pro Se

BOMOR ENTERPRISES, LLC Pro Se

Joint Debtor(s):

Kim M. Wyman Represented By
Thomas J Polis

Plaintiff(s):

KAREN SUE NAYLOR Represented By
William Malcolm

Trustee(s):

Karen S Naylor (TR) Represented By
Christina J O
Arturo M Cisneros

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#9.00 PRE-TRIAL 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) (cont'd from 4-08-21)

Docket 1

Tentative Ruling:

Tentative for 6/24/21:
Continue to coincide with hearing already set for judgment July 8.

Tentative for 6/3/21:
Default has been entered. When will a motion for judgment after default be filed?

Tentative for 4/8/21:
Status? Should the answer be stricken?

Tentative for 3/4/21:
Settled? Status?

Tentative for 2/4/21:
Continue to March 4, 2021 @ 10:00AM Plaintiff to give notice.
Appearance: optional

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... Igor Shabanets

Chapter 7

Tentative for 1/7/21:

Continue to hear settlement referred to in December 23, 2020 Notice?

Appearance: required

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.

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

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 24, 2021

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

#10.00 PRE-TRIAL 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))
(set from s/c hrg held on 10-01-20)
(cont'd from 3-25-21 per order approving stip. to cont. pre-trial conference entered 1-20-21)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION TO DISMISS ADVERSARY PROCEEDING FOLLOWING CONSUMMATION OF COURT-APPROVED SETTLEMENT ENTERED 4 -30-21**

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

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... M3Live Bar & Grill, Inc.

Chapter 7

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, June 24, 2021

Hearing Room

5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#11.00 PRE-TRIAL CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(set from s/c hrg held on 9-01-20)
(cont'd from 6-03-21 per order approving stip to cont. dates re: mtn for administrative clm by Terrace Tower Orange County, LLC pending mediation entered 5-19-21)

Docket 571

***** VACATED *** REASON: CONTINUED TO 7-08-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE DATES RE
MOTION FOR ADMINISTRATIVE CLAIM BY TERRACE TOWER
ORANGE COUNTY, LLC PENDING MEDIATION ENTERED 5-28-21**

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

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

Thursday, June 24, 2021

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP 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.

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
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, June 24, 2021

Hearing Room 5B

11:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

Adv#: 8:19-01041 Fidelity Mortgage Lenders, Inc., Profit Sharing Pl v. Nguyen

#12.00 Plaintiff's Motion For Default Judgment

Docket 29

Tentative Ruling:

Tentative for 6/24/21:
Grant.

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)

Represented By
Nanette D Sanders

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

Thursday, June 24, 2021

Hearing Room 5B

11:00 AM

8:20-11327 Heather Huong Ngoc Luu

Chapter 7

Adv#: 8:20-01117 E-Z Housing Group LLC v. Luu

#13.00 Motion for Default Judgment

Docket 29

Tentative Ruling:

Tentative for 6/24/21:
Grant.

Party Information

Debtor(s):

Heather Huong Ngoc Luu

Represented By
Joshua R Engle

Defendant(s):

Heather Huong Ngoc Luu

Pro Se

Movant(s):

E-Z Housing Group LLC

Represented By
Fritz J Firman

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, June 24, 2021

Hearing Room 5B

11:00 AM

8:20-11327 Heather Huong Ngoc Luu

Chapter 7

Adv#: 8:20-01117 E-Z Housing Group LLC v. Luu

#14.00 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 5-27-21)

Docket 1

Tentative Ruling:

Tentative for 6/24/21:
See #13.

Tentative for 5/27/21:
A continuance was asked last time in order to process a default judgment, yet nothing has been filed. One more continuance to June 24 @ 10:00AM.

Tentative for 4/22/21:
Status on default judgment?

Tentative for 3/25/21:
When will the default judgment motion with supporting papers be filed?

Tentative for 2/25/21:
What is status of default judgment application?

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

Thursday, June 24, 2021

Hearing Room 5B

11:00 AM

CONT... Heather Huong Ngoc Luu

Chapter 7

Tentative for 1/28/21:
Status on filing of motion supporting default judgment? Appearance: optional

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, June 24, 2021

Hearing Room 5B

11:00 AM

8:18-13394 Stephen Nguyen

Chapter 7

Adv#: 8:19-01041 Fidelity Mortgage Lenders, Inc., Profit Sharing Pl v. Nguyen

#15.00 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)
(cont'd from 5-26-21)

Docket 1

Tentative Ruling:

Tentative for 6/24/21:
See #12.

Tentative for 5/26/21:
Continue to coincide with default judgment hearing June 24, 2021 @ 11:00AM.

Tentative for 4/8/21:
Status?

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.

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

Thursday, June 24, 2021

Hearing Room 5B

11:00 AM

CONT... Stephen Nguyen

Chapter 7

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

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, June 24, 2021

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

**#16.00 STATUS CONFERENCE RE: Adversary Complaint for Declaratory Relief
(con't from 4-22-21)**

Docket 1

Tentative Ruling:

Tentative for 6/24/21:

See #s 17 and 18. What is status on withdrawal of reference? Continue to August 26 @ 11:00 a.m.

Tentative for 4/22/21:

Continue to June 23 @ 10:00AM to allow district court's 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

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

Thursday, June 24, 2021

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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

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
Courtroom 5B Calendar**

Thursday, June 24, 2021

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

**#17.00 Andrew R. Corcoran's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 4-22-21)**

Docket 38

Tentative Ruling:

Tentative for 6/24/21:
Status of withdrawal of reference?

Tentative for 4/22/21:
The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference. By that time, the District Court in Maryland will likely have 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 revisiting this motion.

Stay proceedings pending a renewed status conference in approximately 45 days.

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").

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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 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

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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.

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

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Chapter 7

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

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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Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

#18.00 Matthew C. Browndorf's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 4-22-21)

Docket 43

Tentative Ruling:

Tentative for 6/24/21:
Status of withdrawal of reference?

Tentative for 4/22/21:
See #7

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

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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

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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:
Adv#: 8:98-01650 Laguardia v. Tamura

Chapter 0

#19.00 Evaluate Compliance Re: Laguardia's Motion To Compel Responses To Post - Judgment Discovery Requests For Production And Interrogatories; Request For Monetary Sanctions Of \$1,520.00
(cont'd from 4-08-21)

Docket 357

Tentative Ruling:

Tentative for 6/24/21:

So, an updated status report would be appropriate. It seems that judgment debtor is making some effort. What would the creditor have the court do?

Tentative for 4/8/21:

As requested by the judgment creditor, the debtor will augment her answers to include a detailed list of efforts undertaken to obtain the requested documents, and/or to give complete and direct answers to questions. The cursory responses given are insufficient. It is insufficient to simply say "Pending request to IRS..." or to answer "undetermined" when asked about income. Some detail must be given as substantiation, such as hours worked and rate of pay. It cannot be the case that debtor has no information. Continue about 45 days to augment answers. While no sanctions are ordered at this time, they may be revisited depending on the completeness of further answers given.

Tentative for 2/25/21:

Debtor seems to concede that her response to this motion is late but asserts that her response was hampered due to difficulty accessing her mailbox in her mobile home park. Debtor argues that since she has not had contact with Plaintiff for more than a decade, responding to his discovery requests will take time as many documents have either been misplaced or

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lost. Somewhat confusingly, Debtor states that she has attempted to answer Plaintiff's discovery requests to the extent she is able. However, Plaintiff is adamant that no responses to his discovery requests have been received as of the filing of his reply (2/19). Plaintiff also points out that, while he appreciates that it might take some time to gather old documents, these discovery requests were propounded back in November of 2020. Unfortunately, Debtor has not put forth any evidence that she has complied or attempted to comply with the discovery requests despite the statement in her response. Thus, it is appropriate for this court to compel such responses.

On the question of sanctions, Plaintiff points out that if a party fails in its opposition to a motion to compel, a sanction is required under California Code of Civ. Proc. §§ 2030.290, subd. (c); 2031.300, subd. (c.) and pursuant to FRCP, Rule 37, subsection (a)(5)(D), unless the Court finds good cause why sanctions should not be imposed. Here, there seem to be several mitigating factors against imposing the proposed sanction of \$1,520 (the cost of preparing this motion), at this time. First, the case is quite old, and Debtor very well might not have access to the requested information anymore. Second, Debtor is unrepresented and thus, may not fully comprehend what is being asked of her. Third, again, as Debtor is pro se, she may not be able to afford to pay the sanction without incurring undue hardship. Of course, only the first consideration is addressed in Debtor's response; the other two are speculation based upon information in the record. Defendant should understand that she is required to make her full, good faith effort to respond to the discovery, and if unable, she needs to go on record under penalty of perjury that such is the case and carefully outline all efforts made. It is unacceptable to simply fail to respond.

The better part of valor at this junction is to grant the motion but withhold imposition of monetary sanctions unless and until Debtor fails to comply. Plaintiff is correct that by the time this motion is heard, approximately three months will have elapsed since the discovery requests were made. That should be ample time for Debtor to locate the information sought by the discovery requests and/or to catalogue the efforts made. Thus, Debtor will be compelled to respond to the discovery requests within 30 days of the order pending further hearing shortly thereafter to evaluate efforts made and to consider again imposition of monetary sanctions.

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Grant motion to compel within thirty days of entry and schedule continued hearing April 8 @ 11:00AM to evaluate compliance and consider whether monetary sanctions are appropriate.

Party Information

Defendant(s):

Dayle Momi Tamura

Represented By
Stephen D Johnson

Plaintiff(s):

James Laguardia

Represented By
Eric Ridley
Gordon A Petersen

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8:20-13076 I. AM, INC.

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#20.00 Order To Show Cause Re: Contempt For Violation Of The Automatic Stay

Docket 26

Tentative Ruling:

Tentative for 6/24/21:

It is not really possible to discern what happened with the mailing issue, but Debtor, as the party seeking sanctions for violation of the automatic stay, has not carried its burden of showing with clear and convincing evidence that the violation of the automatic stay was knowing and intentional. Debtor also does not dispute alleged Contemnor's assertion that it immediately withdrew the offending arbitration filing upon actual notice of the bankruptcy petition. Finally, Debtor does not dispute that Contemnors attempted to resolve this matter without involving the court. That it was not simply taken off calendar is troublesome. There is a request for imposition of sanctions. While the court cannot find that the motion was entirely frivolous, it also seemingly represents a failure to employ the most basic measures of civility (don't lawyers speak to each other anymore?) The court does not appreciate this sort of imposition upon its time and so it will hear argument whether sanctions are appropriate, or instead simply more excuse for squabbling to extend discussion (and incur more fees) thus exacerbating what at bottom appears to be a trivial matter.

Party Information

Debtor(s):

I. AM, INC.

Represented By
Arash Shirdel

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

2:00 PM

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

Chapter 7

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

#21.00 Neil Watanabe's Motion For Summary Judgment

Docket 73

Tentative Ruling:

Tentative for 6/24/21:

This is defendant Neil Watanabe's ("Watanabe") motion for summary judgment. There is a second motion for summary judgment brought by similarly situated defendant, Dale S. Miller ("Miller"). This memorandum incorporates both motions for summary judgment because the issues of law and critical facts are very similar, if not identical. Both motions are opposed by the chapter 7 trustee, Karen Sue Naylor ("Trustee"). The issue in both motions is whether the respective Defendants' receipt of a deferred compensation benefit was an end-run around the one-year preference period, or a step transaction meant to benefit them at the expense of other creditors. The critical question of law common to both motions is whether Defendants were insiders of debtor, Anna's Linens, Inc. ("Debtor") pursuant to 11 U.S.C. § 547(b)(4)(B) when the transfers occurred. As discussed below, this court has already opined that both Watanabe and Miller were insiders of the debtor when the deferred compensation scheme was instituted (roughly 5-7 years prepetition). Watanabe was Debtor's chief financial officer and Miller had a seat on Debtor's board of directors and occasionally provided legal services to Debtor. Both Watanabe and Miller received payouts from that deferred compensation scheme after severing their connections with Debtor. There is no dispute that both payouts/transfers occurred within 1 year of the petition date. Thus, the critical question of law to be answered here is whether Watanabe and Miller were or should be considered still insiders when the transfers occurred.

1. Summary Judgment Standards

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings.

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FRCP 56(c) provides that judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FRCP 56(e) provides that supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith. FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just.

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex*, 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

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2. Were the Defendants Insiders at The Time of The 'Transfers'?

These cases, and even the arguments, are familiar to the court. Indeed, this court has already heard (and denied) a motion for judgment on the pleadings in the *Watanabe* adversary proceeding. A motion for judgment on the pleadings and a prior motion for summary judgment (both denied) in the *Miller* adversary proceeding have also occurred, with the latter heard as recently as last October. In denying the previous motions, the court made clear that it was wary of granting summary judgment before the close of discovery. Additionally, the court also made clear its skepticism of a bright-line rule where the date of the actual transfer is the only relevant date for determination of insider status of the transferee.

The court also noted that Miller had almost exclusively cited authority from outside the Ninth Circuit to support his position that his insider status terminated when he severed connection with the Debtor and so was not an insider when the transfer actually occurred. However, Miller and Watanabe cite (albeit only in a footnote) *Mann v. GTCR Golder Rauner, LLC, (In re Leapsource, Inc.)* 351 B.R. 708 (D. Ariz. 2006) that, at first glance might appear to support their position. However, the facts of *Mann* are clearly distinguishable, making it of limited instructive use.

In *Mann*, an insider of the debtor corporation laid plans to sell one of the debtor's assets to another corporate entity which the insider owned and controlled. *Id.* at 709-10. The transfer had as consideration the forgiveness of a debt owed indirectly to the insider. *Id.* The insider resigned from the debtor corporation and within just a few days the transfer of the debtor corporation's asset to the insider's corporation was completed. *Id.* The debtor filed its petition a few months later. *Id.* The *Leapforce* trustee challenged the transfer as a preferential transfer to an insider despite that the transfer occurred after the insider was no longer with the debtor corporation. The *Mann* court, after explaining the split of authority that this court has also discussed at length in the last summary judgment motion, observed that although the insider indisputably had laid some groundwork for the eventual transfer, the transfer agreement was not actually finalized and executed until after the insider severed connection with the debtor corporation (even though it was only by a few days). *Id.* at 713-14. Thus, the *Mann* court concluded, as the transfer was

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finalized and executed after the insider severed connection with the debtor, the transfer was not to an insider within the meaning of §547(b)(4). *Id.* at 714.

Here, unlike in *Mann*, the deferred compensation agreements were negotiated and finalized long before the petition date and while Watanabe and Miller were likely insiders of Debtor. All that was needed for Watanabe and Miller to receive payment from the deferred compensation scheme was a pre-determined triggering event, i.e. severing ties with Debtor. This court does not read *Mann* to stand for a bright line rule; rather, as the *Mann* court observed, "insider" is not susceptible to a static interpretation. The §101 (31) definition does not only include a list such as officer or director, but also the important word "includes." Rather, as observed in *Mann* citing the Legislative History S, REP. NO. 95-989 at 25 (1979) "Insider is one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor." *Mann* at 713. Rather, *Mann* can better be read as a case holding that for a party to prevail at summary judgment it must meet the standards for summary judgment on issues for which it bears the burden at trial. The trustee failed in her burden on the issue of insider in *Mann* and so her summary judgment motion was denied. *Id.* at 714

In the prior summary judgment motion in this case, the court took note of Miller's assertion that simply being involved with the debtor does not automatically confer insider status. Indeed, the court noted that insider status is often defined by control or undue influence, giving the creditor the power to have its debts repaid before other creditors. See *Damir v. Trans-Pacific Nat'l Bank (In re Kong)*, 196 B.R. 167, 171 (N.D. Cal. 1996). This court denied summary judgment, in part, to allow Trustee to complete discovery relating to Miller's possible control or influence over Debtor.

Not surprisingly, both Watanabe and Miller argue now that Trustee has not uncovered any additional evidence of their influence or control over the debtor. Indeed, Trustee's opposition to the renewed Miller summary judgment motion contains identical or virtually identical allegations relating to Miller's involvement with the creation and execution of the deferred compensation scheme as was found in the original opposition. It could be argued, as Trustee does, that this court already decided the issue of whether Miller and

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Watanabe were insiders at the time the deferred compensation scheme was arranged. As noted first in the adopted tentative ruling on the Rule 12(c) motion in the *Watanabe* adversary proceeding back in 2018, and again in the adopted tentative ruling in the first *Miller* summary judgment motion, this court stated:

"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.*" (Emphasis added)

Unfortunately, Trustee's opposition does not provide many additional specifics on either Watanabe's or Miller's part regarding how much control they exerted over the debtor or how either of them exercised undue influence that gave them an advantage in payment when debtor was struggling to pay other creditors. Perhaps the closest Trustee comes is her assertion that both Watanabe and Miller were aware of Debtor's financial difficulties and took no action to notify the appropriate individual, as doing so might have jeopardized their receiving a payout. By contrast, Miller's motion casts Miller as a rather passive board member who was not overly involved in much of the high-level decision making. But again, the main evidence supporting that assertion is Miller's own declaration. The obvious implication from Miller's standpoint is that he was not heavily involved in the creation of the deferred compensation scheme and did not take any affirmative steps to influence debtor into paying him his full entitlement before paying other creditors. It must be said that much of the evidence that Miller exercised any significant degree of control or influence, as alleged by Trustee, is mainly circumstantial and inferential. In other words, the facts are thin on both sides of this argument. But, because

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this is Miller's motion, *he* bears the burden of showing absence of triable issues of material fact and that he is entitled to judgment in his favor as a matter of law. Miller must also overcome the mandate to view the alleged facts in the light most favorable to Trustee as the nonmovant. Thus, summary adjudication as to Miller's insider status should be denied as there may still be triable issues of material fact. The same analysis applies to Watanabe except that Watanabe's own declaration suggests he had something more than just passive involvement in the creation of the deferred compensation scheme. The bottom line is that the court is not convinced that either Watanabe or Miller, as highly sophisticated individuals, had only passive and relatively inconsequential involvement in the creation and maintenance of the deferred compensation scheme. It is quite possible that the deferred compensation scheme was devised purely for good faith business reasons, and therefore the date of creation of the scheme should carry more weight than receipt of the funds; but it would strain credulity to believe that a group of highly sophisticated individuals did not at least contemplate, even just in passing, what might happen if the debtor's fortunes faltered. After all, these would be the individuals with access to Debtor's financial data and who would likely be privy to pertinent information long before other creditors. And the question here is made fuzzy because of the relatively longer period between creation of the scheme and receipt of funds. But suppose that the scheme was concocted only days or weeks with Watanabe and Miller's involvement before the petition. Is there much doubt that waiting only a day or so later, within the 365-day insider period, would not shield them? The difference between that scenario and this one is left only to vague inference and not evidence. What can be said is that the Trustee has the burden, so unless she is able somehow to fortify on that point before trial, the ultimate result may more closely resemble *Mann*. But as non-moving party she survives by presumption, barely. The burden shifts at trial.

For all of these reasons, neither side has demonstrated entitlement to judgment as a matter of law and the court believes triable issues of material fact relating to Watanabe's and Miller's insider status remain to be conclusively resolved.

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3. Issues of Material Fact as To Debtor's Insolvency Exist

Defendants' status as insiders is only one of the elements Trustee must demonstrate under §547(b). The other crucial element is that the transfer must have occurred while Debtor was insolvent. Here, as is plain from the motion, opposition, and reply, Debtor's solvency status is a hotly contested issue that is highly fact intensive and not easily suited to summary judgment motions. Thus, to the extent the motions seek summary adjudication of Debtor's solvency at the time of the transfers, that portion of the motions will be denied.

4. Other Arguments

Watanabe and Miller both advance a rather strained interpretation of the caselaw surrounding insider status. For example, they both cite the *EECO* case, which opined that insider status should extend to when a transfer was "arranged," and conclude from it that the temporal aspect of the arrangement is of crucial importance. In support of that assertion, they point to the court's illustrative example of what could happen were the court to interpret §547(b) (4)(B) too literally. The court explained, "if an insider put together a transfer for himself, formally resigned, and *then a minute later* received the monetary benefits from the deal he had made while an insider, it would be clear that the transfer would be avoidable." (Emphasis in motions.) But the court asked for clarification on why it should matter that the transfer occurred after the separation date when the transfer had been long pre-arranged? No clarification or elaboration is really offered. Somehow the parties seem to suggest that mere lapse of time solves the question; the court is not convinced, at least not sufficiently for summary adjudication.

Watanabe and Miller also advance the argument that the arrangement and the transfer to an insider all must occur within one year of the relevant petition date, but that is obviously incorrect. Trustee notes that in *EECO*, the arrangement for the transfer was complete roughly sixteen months before the petition date in that case. *In re EECO Inc.*, 138 B.R. 260, 261-62 (Bankr. C.D. Cal. 1992). Defendants' argument consequently does not really hold water, at

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least not on the authority cited.

Deny both motions. A status report filed on 6/17 indicates that mediation might occur later this month if the parties agree to participate. They definitely should agree to participate.

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

Trustee(s):

Karen S Naylor (TR)

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

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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

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

#22.00 Dale Miller's Motion For Summary Judgment

Docket 83

Tentative Ruling:

Tentative for 6/24/21:
See #21.

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

Trustee(s):

Karen S Naylor (TR)

Represented By

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

Thursday, June 24, 2021

Hearing Room 5B

2:00 PM

CONT...

Anna's Linens, Inc.

Chapter 7

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrod L Bregman
Todd C. Ringstad
Brett Ramsaur
Richard C Donahoo
Andrew Still

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

Friday, June 25, 2021

Hearing Room 5B

9:00 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 2-18-21 per order granting mtn to con't trial pursuant to local rule 9013-1(m) entered 1-27-21)
(cont'd from 6-16-21)**

Docket 83

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, June 29, 2021

Hearing Room 5B

10:30 AM

8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person after July 12 (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1618557582>

ZoomGov meeting number: 161 855 7582

Password: 607853

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828

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

Tuesday, June 29, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

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: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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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 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, June 29, 2021

Hearing Room 5B

10:30 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, June 29, 2021

Hearing Room 5B

10:30 AM

8:21-10392 Monita L Davenport

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**ACAR LEASING LTD
Vs.
DEBTOR**

Docket 12

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY FILED 6-10-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monita L Davenport

Represented By
Joseph M Tosti

Movant(s):

ACAR Leasing LTD d/b/a GM

Represented By
Sheryl K Ith

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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

Tuesday, June 29, 2021

Hearing Room 5B

10:30 AM

8:15-13438 Salvador Manuel Robledo

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY

COLINAS DE CAPISTRANO COMMUNITY ASSOCIATION
Vs
DEBTOR

Docket 142

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
AUTOMATIC STAY ENTERED 6-25-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Salvador Manuel Robledo

Represented By
Joshua L Sternberg

Movant(s):

Colinas De Capistrano Community

Represented By
Neil B Katz

Trustee(s):

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 29, 2021

Hearing Room 5B

10:30 AM

8:21-11352 Don Teruo Kojima and Susan Lorraine Kojima

Chapter 11

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**CORY MEREDITH
Vs
DEBTORS**

Docket 15

Tentative Ruling:

Tentative for 6/29/21:

As near as the court can determine, there has been no compliance with the requirements of FRBP 4001(a), which requires service upon the twenty largest unsecured creditors absent a committee. So, procedurally, a continuance will be required.

On the substantive issues, the parties are about \$4 million apart on alleged FMV of the subject property. But the court must also consider that the movant is in 4th position on the property behind very large senior liens. Debtor does not offer any periodic payment as adequate protection but appears to rely solely upon their perhaps optimistic view of value. This is dangerous and misplaced. This is particularly so, as is reported here, no service is being made upon the senior liens either, which means with the accrual of interest and costs to the seniors any cushion (assuming that one even exists) is being rapidly eroded. Moreover, implicit in debtors' position (arguing about whether 20%, 10% or maybe even less is "adequate") they would impose all of the risk upon the creditor. This risk may be substantial since it is reported that there was a lengthy attempt to sell prepetition which elicited no offers within the range now being urged. This does not bode well for an extensive delay not supported by any periodic payments. One of the basic precepts of Chapter 11 is the debtor cannot impose (at least not for long) uncompensated risk upon the creditor, and where, as here, the margin for error may be small there is a good possibility the court will find value alone inadequate under these circumstances. Consequently, debtors should use this interim to decide how else protection can be made "adequate" under

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

Tuesday, June 29, 2021

Hearing Room 5B

10:30 AM

CONT... Don Teruo Kojima and Susan Lorraine Kojima
these circumstances.

Chapter 11

Continue to permit compliance with Rule 4001(a).

Party Information

Debtor(s):

Don Teruo Kojima

Represented By
Richard H Golubow

Joint Debtor(s):

Susan Lorraine Kojima

Represented By
Richard H Golubow

Movant(s):

Cory Meredith

Represented By
Sarah M St John

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

Tuesday, June 29, 2021

Hearing Room 5B

10:30 AM

8:21-11409 Luther E Secrest

Chapter 13

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

Docket 15

Tentative Ruling:

Tentative for 6/29/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Luther E Secrest

Represented By
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, June 29, 2021

Hearing Room 5B

11:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

#5.00 Order To Show Cause Why Chapter 7 Debtor Jee Hyuk Shin Should Not Be Held In Contempt Of The Court's Order On Chapter 7 Trustee Richard Marshack's Motion To Compel
(cont'd from 6-02-21)

Docket 0

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF DOCKET #52 AND UNILATERAL REQUEST TO
TAKE THE CONTEMPT HEARING OFF CALENDAR FILED 6-28-21**

Tentative Ruling:

Tentative for 6/2/21:
Status?

Tentative for 5/4/21:
Status. Suggested coercive steps?

Party Information

Debtor(s):

Jee Hyuk Shin

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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

Tuesday, June 29, 2021

Hearing Room 5B

11:00 AM

8:21-10588 Gregory Edward Smith and Erin Marie Smith

Chapter 7

**#6.00 Motion to Avoid Lien Under 11 U.S.C. Section 522(f) And, If Applicable, For Turnover Of Property (Personal Property)
(cont'd from 5-25-21)**

Docket 11

Tentative Ruling:

Tentative for 6/29/21:
Off calendar in view of stipulation entered June 7?

Tentative for 5/25/21:
Continue to coincide with hearing on objection to exemption June 29 @ 11:00. More briefing is expected on the question of whether under any circumstances a bankruptcy exemption, and thus logically a 522(f) motion, can be asserted successfully in property that is not property of the estate, such as corporate property of a wholly-owned professional corporation. Normally the estate holds only the shares, not the individual items of corporate property. On the other hand, California's statute suggests the "wildcard" of CCP§703.140(b)(5) can be asserted in "any property" without clarification that the judgment debtor holds title or even an interest? Would assignment to mediation assist?

Party Information

Debtor(s):

Gregory Edward Smith

Represented By
Eliza Ghanooni

Joint Debtor(s):

Erin Marie Smith

Represented By
Eliza Ghanooni

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 29, 2021

Hearing Room 5B

11:00 AM

CONT... Gregory Edward Smith and Erin Marie Smith

Chapter 7

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

Tuesday, June 29, 2021

Hearing Room 5B

11:00 AM

8:20-11560 Joe Anthony Santa Maria

Chapter 11

#7.00 Motion To Convert Case From Chapter 11 to 13.

Docket 91

Tentative Ruling:

Tentative for 6/29/21:
Grant.

Party Information

Debtor(s):

Joe Anthony Santa Maria

Represented By
Nicholas W Gebelt
M. Jonathan Hayes

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

Tuesday, June 29, 2021

Hearing Room 5B

11:00 AM

8:20-12856 1875 N Palm Canyon Partners II, LLC

Chapter 7

#8.00 Motion For Authority To Sell Or Abandon Estate's Interest In Potential Avoidance Claims

Docket 74

Tentative Ruling:

Tentative for 6/29/21:
Grant.

Party Information

Debtor(s):

1875 N Palm Canyon Partners II,

Represented By
Edmond Richard McGuire
Marisol A Nagata

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Erin P Moriarty

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

Tuesday, June 29, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:21-01011 Vibe Micro, Inc. v. Remares Global, LLC

**#9.00 STATUS CONFERENCE RE: Complaint For: (1) Equitable Subordination;
(2) Recharacterization; And (3) Objection To Claim
(cont'd from 5-27-21)**

Docket 1

Tentative Ruling:

Tentative for 6/29/21:
No status report?

Tentative for 5/27/21:
See #13. The parties both speak of summary judgment motions. Should this status conference be continued until a date following the projected filings of same? If not, the following shall apply: complete discovery Nov. 1, 2021; last date for pretrial motions December 10; Pretrial Conference January 20, 2022. This case is uniquely suited for mediation. Should it be ordered?

Appearance: Required.

Tentative for 5/13/21:
Continue to May 27, 2021 @ 11:00 a.m. to coincide with hearing on motion to dismiss.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Remares Global, LLC

Pro Se

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

Tuesday, June 29, 2021

Hearing Room 5B

11:00 AM

CONT... Igor Shabanets

Chapter 7

Plaintiff(s):

Vibe Micro, Inc.

Represented By
Aaron J Malo
Jacqueline A Gottlieb

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, June 29, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#10.00 Motion for Order Conferring Standing Upon Vibe Micro, Inc. To Prosecute Adversary Case No. 8:21-ap-01011-TA

Docket 316

***** VACATED *** REASON: OFF CALENDAR - VIBE MICRO, INC'S
NOTICE OF WITHDRAWAL WITHOUT PREJUDICE OF MOTION FOR
ORDER CONFERRING STANDING UPON VIBE MICRO, INC. TO
PROSECUTE ADVERSARY CASE NO 8:21-AP-01011 TA FILED 6-15-21**

Tentative Ruling:

- NONE LISTED -

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, June 29, 2021

Hearing Room

5B

11:00 AM

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

Chapter 7

#11.00 Sixth Omnibus Objection to Secured Gift Card/Store Credit Claims

Claims Subject to Objection:

Claim No. 402	Miriam Torres de Viveros
Claim No. 517	Patricia Wacaster
Claim No. 576	Dianne M. Danley
Claim No. 620	Alma V. Baeza Rebolledo
Claim No. 630	Vertesha N. Delouth
Claim No. 644	Enna Lee McNeil
Claim No. 647	Doris Petronella
Claim No. 1428	Dorothy Morris
Claim No. 1442	Jeanette Beck

Docket 2974

Tentative Ruling:

Tentative for 6/29/21:
Sustain. Allow as unsecured priority.

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 29, 2021

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
Ashley M Teesdale

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 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/1601973676>

ZoomGov meeting number: 160 197 3676

Password: 038749

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <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).

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

8:18-14436 Juan Jesus Rojas de Borbon

Chapter 11

#1.00 U.S. Trustee's Motion to Dismiss or Convert Reorganized Debtor's Case Under 11 U.S.C. §1112(B) For Failure To Pay Post-Confirmation Quarterly Fees

Docket 121

Tentative Ruling:

Tentative for 6/30/21:
Can the UST confirm now current?

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**

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

8:17-10517 Lisa Hackett

Chapter 11

**#2.00 CONT Scheduling And Case Management Conference
(cont'd from 3-03-21)**

[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 6/30/21:
Continue to August 11 @ 10:00AM. More continuances should not be expected.

Appearance: excused

Tentative for 3/3/21:
It sounds from the December status report like the plan is being paid as agreed but since no updated report was filed, the court is uncertain. Will debtor seek to administratively close or obtain a final decree? Timetable?

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.

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

CONT... Lisa Hackett

Chapter 11

Party Information

Debtor(s):

Lisa Hackett

Pro Se

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

Wednesday, June 30, 2021

Hearing Room

5B

10:00 AM

8:21-10668 Expo Marketing Group, LLC, a Delaware limited liab

Chapter 11

**#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
LLC, a Delaware limited liability company
(cont'd from 4-21-21)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR ORDER DISMISSING CASE ENTERED 6-23-21**

Tentative Ruling:

Tentative for 4/21/21:

Is there any reason to keep this case in Chapter 11? See #5

Party Information

Debtor(s):

Expo Marketing Group, LLC, a

Represented By
Marc C Forsythe

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

8:21-11352 Don Teruo Kojima and Susan Lorraine Kojima

Chapter 11

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

Docket 1

Tentative Ruling:

Tentative for 6/30/21:

Deadline for filing plan and disclosure statement: September 30, 2021

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

Debtor to give notice of the deadline by: July 15, 2021

Appearance: required

Party Information

Debtor(s):

Don Teruo Kojima

Represented By
Richard H Golubow

Joint Debtor(s):

Susan Lorraine Kojima

Represented By
Richard H Golubow

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

**#5.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual
(cont'd from 3-03-21)**

Docket 1

Tentative Ruling:

Tentative for 6/30/21:
See #6.

Tentative for 3/3/21:
Continue to coincide with confirmation hearing.

Tentative for 2/24/21:
Continue to coincide with hearing on disclosure on March 3, 2021 @10:00
a.m. Appearance not required.

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

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

CONT... AEPC Group, LLC

Jeffrey S Shinbrot

Chapter 11

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

8:20-11611 AEPC Group, LLC

Chapter 11

**#6.00 Confirmation Of Original 11 Plan
(set from discl stmt hrg held on 3-03-21)**

Docket 135

Tentative Ruling:

Tentative for 6/30/21:
Confirm.

Tentative for 3/3/21:
Approve. Set confirmation hearing and deadlines.

Tentative for 1/13/21:
The Disclosure Statement cannot be approved as written for the simple reason that it fails to meaningfully discuss the treatment of the \$1,335,000 of Claim #24, the Stelter claim. While the claim may be disputed it must be regarded as allowed until there is a formal determination otherwise. In practical terms, feasibility and other confirmation issues cannot be realistically evaluated without a discussion of how the claim will be met, or even if there will be an adversary proceeding, how would the reorganized debtor deal with a fully allowed claim if that should result.

Deny.

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, June 30, 2021

Hearing Room 5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

**#7.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual. LLC
(cont'd from 4-21-21)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR ORDER DISMISSING CASE AND AUTHORIZING
PAYMENT OF ALL REMAINING CLAIM AGAINST THE ESTATE; AND
DISMISSING CASE ENTERED 6-24-21**

Tentative Ruling:

Tentative for 4/21/21:
Continue to June 30, 2021.

Tentative for 2/10/21:
The deadlines proposes for filing of claims are acceptable but should be the subject of their own motion(s). The court is inclined to set March 31 2021 as a continued status conference to coincide with the cash collateral hearing already on calendar, unless it should be a few weeks later to follow a filing of plan and disclosure?

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#8.00 Final Hearing Re: Motion For Entry Of An Order Authorizing Debtor To Use Cash Collateral On An Interim Basis Pending A Final Hearing
**(OST Signed 1-20-21)
(cont'd from 4-21-21)**

Docket 12

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR ORDER DISMISSING CASE AND AUTHORIZING
PAYMENT OF ALL REMAINING CLAIMS AGAINST THE ESTATE;
AND DISMISSING CASE ENTERED 6-24-21**

Tentative Ruling:

Tentative for 4/21/21:

Continue on same terms and conditions until the close of the sale, which the court understands is imminent.

Tentative for 4/7/21:

Inasmuch as the bulk of assets are being sold (see #3) this motion appears largely moot, but in any event, use is authorized on same terms pending close of sale.

Tentative for 1/27/21:

Opposition, if any, due at hearing.

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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

Wednesday, June 30, 2021

Hearing Room 5B

10:00 AM

8:21-10017 DGWB Ventures, LLC

Chapter 11

#9.00 Disclosure Statement Regarding Debtor's Chapter 11 Plan of Liquidation Dated April 5, 2021

Docket 69

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF DISCLOSURE STATEMENT REGARDING
DEBTOR'S CHAPTER 11 PLAN OF LIQUIDATION DATED APRIL 5,
2021**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

DGWB Ventures, LLC

Represented By
Michael B Reynolds
Andrew Still

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person after July 12 (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1603798062>

ZoomGov meeting number: 160 379 8062

Password: 718611

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <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**

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, July 1, 2021

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 4-29-21)**

Docket 1

Tentative Ruling:

Tentative for 7/1/21:
See #12.

Tentative for 4/29/21:
An order granting a motion to approve compromise was entered on 3/29/21.
Will this be dismissed?

Tentative for 3/25/21:
Continue to coincide with motion to approve compromise filed March 9.

Tentative for 7/30/20:
See #12.1

Tentative for 6/3/20:

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

CONT... **Deborah Jean Hughes**
Continue per stipulation (not yet received).

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.

Party Information

Debtor(s):

Deborah Jean Hughes	Represented By Matthew C Mullhofer
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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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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:21-01001 Marshack v. American Express National Bank

#2.00 STATUS CONFERENCE RE: Complaint For: 1) Avoidance of Transfers Pursuant to 11 USC Section 544(b) and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05; 2) Avoidance of Transfers Pursuant to 11 USC Section 548(a)(1)(B); 3) Recovery of Avoided Transfers Pursuant to 11 USC Section 550; and 4) Disallowance of Claims Pursuant to 11 USC Section 502
(cont'd from 5-27-21 per order approving stip. to continue status conference entered 5-18-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-02-21 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 6-28-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

American Express National Bank

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

8:20-13315 Gary T Hernandez

Chapter 7

Adv#: 8:21-01015 Morris v. Hernandez

#3.00 STATUS CONFERENCE RE: Complaint For Determination Of Dischargeability Under 11 USC Section 523(A)(6) Of Debts Of Creditor Victoria Morris (cont'd from 6-03-21)

Docket 1

Tentative Ruling:

Tentative for 7/1/21:
Still no status report? Why shouldn't the court dismiss?

Tentative for 6/3/21:
Why no status report?

Party Information

Debtor(s):

Gary T Hernandez

Represented By
Michael J Hemming

Defendant(s):

Gary T Hernandez

Pro Se

Plaintiff(s):

Victoria Morris

Represented By
Bruce A Wilson

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Thursday, July 1, 2021

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 4-29-21)**

Docket 1

Tentative Ruling:

Tentative for 7/1/21:

Continue to July 15 @ 11:00AM to coincide with motion for judgment on pleadings.

Tentative for 4/29/21:

Is it really true that the parties are unable to stipulate to any facts? When will the discovery dispute be determine? It does not sound like this case is ready to be set for trial at this point. Should another continuance be given?

Tentative for 3/11/21:

Status?

Tentative for 1/28/21:

All the deadlines have passed but no significant status report has been received despite several continuances. Status?

Appearance: required

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

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
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 -

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

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, July 1, 2021

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#4.10 Plaintiff's Emergency Motion To Extend Time To Respond To Defendant's Motion for Judgment On The Pleadings Or In The Alternative Defer Defendant's Motion Until Trial
(OST Signed 6-28-21)

Docket 77

Tentative Ruling:

Tentative for 7/1/21:
Response is due at the hearing.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

8:19-11975 Farhad Mohebbi

Chapter 7

Adv#: 8:20-01130 Kosmala v. Mohebbi et al

#5.00 PRE-TRIAL 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)
(set from s/c hrg held on 12-03-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-07-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE DEADLINE
TO RESPOND TO DISCOVERY AND PARTICIPATE IN MEDIATION
ENTERED 1-27-21**

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

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

Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

CONT... Farhad Mohebbi

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, July 1, 2021

Hearing Room 5B

10:00 AM

8:20-12473 Matthew Vy Cuong Bui

Chapter 7

Adv#: 8:20-01166 Duong et al v. Bui et al

**#6.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
(set from s/c hrg held on 2-25-21)**

Docket 1

Tentative Ruling:

Tentative for 7/1/21:
Schedule for trial. Counsel are requested to provide alternative dates about 60 days hence.

Tentative for 2/25/21:
Deadline for completing discovery: June 1, 2021
Last date for filing pre-trial motions: June 18, 2021
Pre-trial conference on: July 1, 2021 @ 10:00AM
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Matthew Vy Cuong Bui	Represented By Joseph M Adams
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Defendant(s):

Matthew Vy Cuong Bui	Pro Se
Diversifive LLC	Pro Se

Plaintiff(s):

Bryant Duong	Represented By Naveen Madala
Bryan Koy	Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 1, 2021

Hearing Room 5B

10:00 AM

CONT... Matthew Vy Cuong Bui

Naveen Madala

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

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

#7.00 STATUS CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses (cont'd from 4-29-21 per order on stip. to bifurcate & cont. discovery completion deadline; (2) cont. pre-trial motion filing deadline; (3) take pre-trial conference off calendar; and (4) set status conference entered 3-08-21)

Docket 60

Tentative Ruling:

Tentative for 7/1/21:

Can the court conclude that all parties are agreeable to a mediation? If so, discovery deadline is September 30, deadline for filing pretrial motions is Oct. 28 and Pre Trial conference is December 2 @10:00AM.

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

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

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

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, July 1, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

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

**#8.00 STATUS CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses
(con't from 4-29-21 per order on stip. to: (1) bifurcate and cont. discovery completion deadline; (2) cont pre-trial mtn filing deadline; (3) take pre-trial conf. off calendar; and (4) set status conference entered 3-08-21)**

Docket 70

Tentative Ruling:

Tentative for 7/1/21:
Same as #7.

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

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Jonathan Seligmann Shenson
Lauren N Gans

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

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

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

**#9.00 STATUS CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses
(cont'd from 4-29-21 per order on stip to: (1) bifurcate and cont. discovery completion deadline; (2) cont. pre-trial mtn filing deadline; (3) take pre-trial conf. off calendar; and (4) set status conference entered 3-08-21)**

Docket 54

Tentative Ruling:

Tentative for 7/1/21:
Same as #s 7 and 8

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

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Jonathan Seligmann Shenson
Lauren N Gans

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

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

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

**#10.00 STATUS CONFERENCE RE: Discovery Completion Deadline, Pre-Trial Motion Filing Deadline, and Deadlines Related to Expert Witnesses
(cont'd from 4-29-21 per order on stip. to: (1) bifurcate & cont. discovery completion deadline; (2) cont. pre-trial mtn filing deadline; (3) take pre-trial conf. off calendar; and (4) set status conference entered 3-08-21)**

Docket 42

Tentative Ruling:

Tentative for 7/1/21:
Same as #s 7,8 and 9.

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Jonathan Seligmann Shenson
Lauren N Gans

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

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

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

#11.00 Plaintiffs Joseph Samec And Brenda Samec's Motion To Compel Further Responses And Production Of Documents Set Two, From Defendant And Sanctions Against Defendant, In An Amount Deemed Appropriate By The Court

Docket 69

Tentative Ruling:

Tentative for 7/1/21:

This is plaintiffs Joe and Brenda Samec's ("Plaintiffs") motion to compel further responses and production of documents set two, from defendant and sanctions against defendant, in an amount deemed appropriate by the court. The motion is opposed by debtor/defendant Guy S. Griffithe ("Defendant").

This motion, like the adversary proceedings as a whole so far, is something of a substantive and procedural disaster. This is not a surprise as Plaintiffs are attempting to prosecute their case in pro se, which was always going to pose challenges. This is especially so in something as nuanced and technical as the discovery phase of litigation.

LBR 7026(c)(2) states:

Prior to the filing of any motion relating to discovery, the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, the opposing party must meet with the moving party within 7 days of service upon the opposing party of a letter requesting such meeting and specifying the terms of the discovery order to be sought.

Unfortunately for Plaintiffs, it appears that the two sides have not actually met and conferred, though Plaintiffs assert that several attempts to

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

CONT... Guy S. Griffithe

Chapter 7

do so have been made. Indeed, Plaintiffs assert that no fewer than five attempts to meet and confer with Defendant's counsel have been made since early May of 2021. Plaintiffs concede that Defendant's counsel did finally answer, but the tone of his communication was purportedly argumentative and not responsive. Apparently, this correspondence did not result in a discovery conference taking place or even being scheduled. Plaintiffs and Defendant provide copies of their "meet and confer" correspondence. Defendant points out that, rather than trying to schedule a discovery conference, the correspondence mainly expressed frustration at Defendant's perceived lack of effort to comply with the discovery requests in good faith, and was not interpreted as a meet and confer letter in the traditional sense. Defendant, therefore, argues that the meet and confer letters should largely be ignored for purposes of this motion. Upon review, the meet and confer letters, although so titled, read more like demand letters and less like invitations to actually meet and work through the various discovery issues.

Plaintiffs also assert that they placed phone calls to Defendant's counsel ostensibly to arrange a meeting, and left messages that went unreturned. Unfortunately, the content of those phone calls and messages is not provided except indirectly in Mr. Samec's declaration. There does not seem to have been any agreement or order of this court that would supersede the local rule quoted above. Thus, the motion should likely be denied for failure to comply with LBR 7026-1(c)(2).

The motion is also likely procedurally improper under LBR 7026-1(c)(3), which states:

If the parties are unable to resolve the dispute, the party seeking discovery must file and serve a notice of motion together with a written stipulation by the parties.

(A) The stipulation must be contained in 1 document and must identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue.

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

CONT...

Guy S. Griffithe

Chapter 7

(B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.

(C) In the absence of such stipulation or a declaration of a party of noncooperation by the opposing party, the court will not consider the discovery motion.

Here, no such stipulation accompanied this motion. There was also no declaration of noncooperation by Defendant. Much to the contrary. Defendant asserts that he at least attempted to comply with the discovery requests. Thus, the motion should be denied for failure to comply with this local rule as well.

The parties still need to meet and confer. Plaintiffs' pro se status is not supposed to factor in the rules, but as a practical matter, it does. Without representation, valid discovery defenses might be misconstrued as bad faith evasion tactics leading to less clarity in the record instead of more. However, there is some chance an actual good faith meet and confer conference could resolve various sticking points in this motion (or at least narrow the issues and restore a degree of cooperation). At the very least the parties must list all of the requests, the documents actually presented as exhibits, and the arguments factual and/or legal as to whether what is produced is (or is not) sufficient, and all reasons why.

Sanctions do not appear warranted at this time but Plaintiffs are urged to retain counsel for this important and complex phase of the litigation. Defendant is also warned that legalistic tactics that can be perceived as uncooperative or evasive will also not be well received. Good faith cooperation is what is required. Discovery disputes can be vexing under even the best conditions. It is also easy to run afoul of the Local Rules, as Plaintiffs have likely done here. However, persistent noncompliance on either side will not be viewed lightly. If such recurs, the resort to sanctions may be reconsidered.

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

Thursday, July 1, 2021

Hearing Room 5B

11:00 AM

CONT... Guy S. Griffithe

Chapter 7

Continue to August 26 @ 11:00 a.m.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones
Laurie Schiff

Defendant(s):

Guy Griffithe Et.Al

Represented By
Laurie Schiff
Ralph C Shelton II

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, July 1, 2021

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01228 Marshack v. Hughes et al

#12.00 Motion to Dismiss Adversary Complaint Pursuant to Approved Settlement Agreement

Docket 60

Tentative Ruling:

Tentative for 7/1/21:
Dismiss as requested.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer
Michael Jones
Sara Tidd

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**

Tuesday, July 6, 2021

Hearing Room 5B

10:30 AM

8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person after July 12 (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1600025543>

ZoomGov meeting number: 160 002 5543

Password: 980969

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828

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

Tuesday, July 6, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

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: <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, July 6, 2021

Hearing Room 5B

10:30 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, July 6, 2021

Hearing Room 5B

10:30 AM

8:21-10477 Sherrie Anne Palmer

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**JPMORGAN CHASE BANK, N.A.
Vs.
DEBTOR**

Docket 16

Tentative Ruling:

Tentative for 7/6/21:
Grant.

Appearance: optional

Party Information

Debtor(s):

Sherrie Anne Palmer

Represented By
Sharon C Bobeczko

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By
Joseph C Delmotte

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Tuesday, July 6, 2021

Hearing Room 5B

10:30 AM

8:16-12695 Adrienne Y. Turner

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-22-21)

**WELLS FARGO BANK
Vs.
DEBTOR**

Docket 89

Tentative Ruling:

Tentative for 7/6/21:
Status on whether payments are post confirmation current?

Tentative for 6/22/21:
Grant absent stipulated APO.

Tentative for 5/11/21:
Grant absent stipulated APO.

Party Information

Debtor(s):

Adrienne Y. Turner

Represented By
Joseph A Weber

Movant(s):

Wells Fargo Bank, National

Represented By
Eric P Enciso
Sean C Ferry

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

Tuesday, July 6, 2021

Hearing Room 5B

10:30 AM

CONT... Adrienne Y. Turner

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 6, 2021

Hearing Room 5B

10:30 AM

8:18-10860 Jose Navarro

Chapter 13

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**ELIZON MASTER PARTICIPATION TRUST I, U.S. BANK TRUST NATIONAL
ASSOCIATION, AS OWNER TRUSTEE
Vs
DEBTOR**

Docket 108

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 6-28-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Navarro

Represented By
Christopher J Langley

Movant(s):

Elizon Master Participation Trust I,

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, July 6, 2021

Hearing Room 5B

10:30 AM

8:21-10941 William Scott Griffiths and Loretta Han Yi Griffiths

Chapter 7

#4.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
(cont'd from 6-15-21 per order approving stip. to cont. mtn for rlfsty
entered 6-02-21)

**660 BVD, LLC
Vs.
DEBTORS**

Docket 19

Tentative Ruling:

Tentative for 7/6/21:

Grant. The real question is whether the recording of an abstract to create a judgment lien would effect a preference? The court understands that under California law the recording of the abstract relates back, and in so doing is outside the preference period. Some better analysis on this point would have been useful. The trustee has apparently concluded that is the case and does not oppose this motion. Thus absent an effective challenge the movant is a secured creditor and should be treated as such. Creditors will need a better explanation as to why some other approach is appropriate.

Appearance: yes

Party Information

Debtor(s):

William Scott Griffiths

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Loretta Han Yi Griffiths

Represented By
Brian J Soo-Hoo

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

Tuesday, July 6, 2021

Hearing Room 5B

10:30 AM

CONT... William Scott Griffiths and Loretta Han Yi Griffiths

Chapter 7

Movant(s):

660 BVD, LLC

Represented By
Ryan D Zick

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 6, 2021

Hearing Room

5B

11:00 AM

8:18-10762 Jack Richard Finnegan

Chapter 7

#5.00 Chapter 7 Trustee's Motion for Order: (1) Compelling Debtor and Any Other Occupants to Vacate and Turn Over Real Property; (2) Establishing Procedure for Removal of Personal Property; and (3) Authorizing Issuance of Writ of Assistance

Docket 355

Tentative Ruling:

Tentative for 7/6/21:

Under 11 U.S.C. §541(a) the property is clearly property of the estate, which Trustee has the duty to expeditiously administer in the interest of creditors. 11 U.S.C. §704(a) The Trustee has exercised every reasonable forbearance to give the debtor an opportunity to find another way to pay creditors, such as a reverse mortgage. This is now 40 months later and more delay is simply not appropriate. Moreover, despite every opportunity debtor has not cooperated in the least in finding an alternative means of paying creditors. Instead, debtor has openly defied all reasonable attempts at obtaining his cooperation and ignores his affirmative duty to turn over the property to the Trustee as commanded under §§521(a)(4) and 542(a), and/or to cooperate with the Trustee in cataloging and liquidating property of the estate as required in FRBP Rule 4002(a)(3) and (4). Enforcement may be by motion, such as this one. FRBP Rule 7001(1). More delay and obstruction is not to be tolerated.

Grant with issuance of a writ of assistance.

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**

Tuesday, July 6, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#6.00 Trustee's Motion For Order Authorizing Sale of Real Property: (A) Outside the Ordinary Course of Business; (B) Free and Clear of Liens; (C) Subject to Overbids and (D) for Determination of Good Faith Purchasers

Docket 328

Tentative Ruling:

Tentative for 7/6/21:

Grant sale portion of the motion. Insofar as the Trustee proposes to distribute proceeds of non-institutional junior liens, that should not be done until the court has ruled on whether all such junior liens are allowable. Vibe Micro has objected to the distribution portion of the motion (if, in fact, that is what trustee presently intends). Counter arguments about whether the compromise and subordination approved by the court must necessarily include distribution to Remares, or whether Vibe Micro has separate and timely standing to object, or whether there has been a res judicata determination after issues were litigated, must be decided via separate proceedings, such as perhaps Vibe Micro's Rule 60 motion. Proceeds are to be kept by the Trustee in trust pending resolution of these issues or further order.

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**

Wednesday, July 7, 2021

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person after July 12 (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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Video/audio web address:

<https://cacb.zoomgov.com/j/1619920450>

ZoomGov meeting number: 161 992 0450

Password: 203472

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828

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

Wednesday, July 7, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <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).

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

Wednesday, July 7, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

Docket 0

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

Thursday, July 8, 2021

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 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/1613789056>

ZoomGov meeting number: 161 378 9056

Password: 581142

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828

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

Thursday, July 8, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <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).

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

Thursday, July 8, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, July 8, 2021

Hearing Room 5B

10:00 AM

8:20-12416 Michele Lynn Stover

Chapter 7

Adv#: 8:21-01013 Bidoglio v. Stover

**#1.00 STATUS CONFERENCE RE: Complaint To Determine Nondischargeability Of Debt
(cont'd from 5-27-21 per another summons issued on 3-26-21)
(cont'd from 6-10-21)**

Docket 1

Tentative Ruling:

Tentative for 7/8/21:

Deadline for completing discovery: September 30, 2021

Last date for filing pre-trial motions: Oct. 15, 2021

Pre-trial conference on: Nov. 4, 2021

Appearance: required

Tentative for 6/10/21:

What is the status following denial of motion for more definite statement?

Continue about 30 days.

Party Information

Debtor(s):

Michele Lynn Stover

Represented By

Christopher J Langley

Defendant(s):

Michele Lynn Stover

Pro Se

Plaintiff(s):

Ana L Bidoglio

Represented By

Henry J Josefsberg

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

Thursday, July 8, 2021

Hearing Room 5B

10:00 AM

CONT... Michele Lynn Stover

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, July 8, 2021

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

- #2.00** PRE-TRIAL 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)**
(set from s/c hrg held on 10-15-20)
(cont'd from 4-29-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-12-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL
CONFERENCE ENTERED 6-24-21**

Tentative Ruling:

Tentative for 4/29/21:

Neither side can agree to a joint pretrial stipulation? The whole point is defeated by two unilateral statements, and the court is not disposed to devote an entire week of trial dealing with this dispute in its current raw form. It's rather straightforward. There will be some points too obvious for there to be serious controversy. They are agreed and belong on a list. There will inevitably be items not agreed, in which case there will be a list of items that must be litigated. This hopefully is a smaller list but it must be a list nevertheless. Witnesses and exhibits will be identified (numbers for plaintiff and letters for defendant). Exhibits will be presented in three ring binders. Parties are to meet and confer and make a serious effort to do this right. Another failure of this sort will not be well received. Continue for approximately 90 days.

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.

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

Thursday, July 8, 2021

Hearing Room 5B

10:00 AM

CONT... Young Ha Kim

Chapter 7

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

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 8, 2021

Hearing Room

5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#3.00 PRE-TRIAL CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(set from s/c hrg held on 9-01-20)
(cont'd from 6-24-21 per order approving stip to cont. dates re: mtn for administrative clm by Terrace Tower Orange County, LLC pending mediation entered 5-28-21)

Docket 571

***** VACATED *** REASON: CONTINUED TO 7-15-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE DATES RE:
MOTION FOR ADMINISTRATIVE CLAIM BY TERRACE TOWER
ORANGE COUNTY, LLC PENDING MEDIATION ENTERED 6-09-21**

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.

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

Thursday, July 8, 2021

Hearing Room 5B

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.

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
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 8, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 11

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

**#4.00 PRE-TRIAL CONFERENCE RE: Notice of Removal of Civil Action to United States Bankruptcy Court
(set from 5-13-20 s/c hrg held)
(cont'd from 4-29-21)**

Docket 1

Tentative Ruling:

Tentative for 7/8/21:
Continue to coincide with hearing on summary judgment, August?

Tentative for 4/29/21:
See ## 17 and 18.

Tentative for 4/1/21:
Continue to April 29, 2021 @ 2:00 p.m. to coincide with summary judgment motion.

Tentative for 2/25/21:
What is status of stipulation to consolidate adversary proceedings? Continue SC about 30 days for that to occur.

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.

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

Thursday, July 8, 2021

Hearing Room

5B

11:00 AM

CONT... Igor Shabanets

Chapter 11

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.

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, July 8, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#5.00 Motion For Default Judgment

Docket 38

Tentative Ruling:

Tentative for 7/8/21:

Grant judgment in amount prayed, to be non-dischargeable. Plaintiff to submit form of judgment.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Igor Shabanets

Represented By
Bruce A Boice

Plaintiff(s):

Porsche Leasing Ltd.

Represented By
Stacey A Miller

Porsche Financial Services Inc

Represented By
Stacey A Miller

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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

Thursday, July 8, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01077 Porsche Leasing Ltd. et al v. Shabanets

#6.00 PRE-TRIAL 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) (cont'd from 6-24-21)

Docket 1

Tentative Ruling:

Tentative for 7/8/21:
See #5.

Tentative for 6/24/21:
Continue to coincide with hearing already set for judgment July 8.

Tentative for 6/3/21:
Default has been entered. When will a motion for judgment after default be filed?

Tentative for 4/8/21:
Status? Should the answer be stricken?

Tentative for 3/4/21:
Settled? Status?

Tentative for 2/4/21:

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

Thursday, July 8, 2021

Hearing Room 5B

11:00 AM

CONT... Igor Shabanets

Chapter 7

Continue to March 4, 2021 @ 10:00AM Plaintiff to give notice.
Appearance: optional

Tentative for 1/7/21:
Continue to hear settlement referred to in December 23, 2020 Notice?

Appearance: required

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.

Party Information

Debtor(s):

Igor Shabanets	Represented By Bruce A Boice
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Defendant(s):

Igor Shabanets	Pro Se
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Plaintiff(s):

Porsche Leasing Ltd.	Represented By Stacey A Miller
Porsche Financial Services Inc	Represented By Stacey A Miller

Trustee(s):

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

Tuesday, July 13, 2021

Hearing Room 5B

10:30 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 13, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

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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
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Tuesday, July 13, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 13, 2021

Hearing Room 5B

10:30 AM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-08-21)

**CTF ASSET MANAGEMENT, LLC
Vs.
DEBTORS**

Docket 82

Tentative Ruling:

Tentative for 7/13/21:
Grant absent current status or APO.

Tentative for 6/8/21:
Same tentative, grant unless current or agree APO.

Tentative for 5/11/21:
Grant unless current or stipulated APO.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

CTF Asset Management, LLC, its

Represented By

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

Tuesday, July 13, 2021

Hearing Room 5B

10:30 AM

**CONT... Aureliano Gonzalez and Juana Artega De Gonzalez
Reilly D Wilkinson**

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 13, 2021

Hearing Room 5B

11:00 AM

8:12-24194 Arthur David Montez and Margarita Rico Montez

Chapter 7

#2.00 Order To Show Cause Re: Contempt Against Erica L. Brachfeld, Esq., LVNV Funding, LLC And Resurgent Capital Services, LLC Pursuant To LBR 9020-1

Docket 0

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
JOINT STIPULATION TO VACATE ORDER TO SHOW CAUSE AND
JULY 13, 2021 HEARING THEREON ENTERED 6-29-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arthur David Montez

Represented By

Michael A Metaxas - SUSPENDED -
Misty A Perry Isaacson

Joint Debtor(s):

Margarita Rico Montez

Represented By

Michael A Metaxas - SUSPENDED -
Misty A Perry Isaacson

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 13, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#3.00 Order To Show Cause Re: Civil Contempt For Willful Violation Of The Automatic Stay By Unauthorized Person Seeking To Sell Estate Property Without Authorization

Docket 0

Tentative Ruling:

Tentative for 7/13/21:
Status of attempts to obtain response from Mr. Goldschwartz?

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, July 13, 2021

Hearing Room 5B

11:00 AM

8:10-11070 Sharon A Hill

Chapter 7

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

RICHARD A. MARSHACK,, CHAPTER 7 TRUSTEE

LAW OFFICES OF LARRY D. SIMONS, ATTORNEY FOR CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, LLP, ACCOUNTANT FOR CHAPTER 7 TRUSTEE

Docket 37

Tentative Ruling:

Tentative for 7/13/21:
Allow as prayed. Appearance optional.

Party Information

Debtor(s):

Sharon A Hill

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 13, 2021

Hearing Room 5B

11:00 AM

8:10-26382 Fariborz Wosoughkia and Natasha Wosoughkia

Chapter 7

#5.00 First Interim Fee Application for Compensation and Reimbursement of Costs,
Period: 1/23/2020 to 5/31/2021,

MICHAEL G. SPECTOR, TRUSTEE'S ATTORNEY

FEE:	\$67,986.77
EXPENSES:	\$1608.12

Docket 92

Tentative Ruling:

Tentative for 7/13/21:
Allow as prayed. Payment up to \$30k at discretion of trustee.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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

Tuesday, July 13, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#6.00 Motion For An Order Authorizing the Chapter 7 Trustee to Make an Interim Distribution to Certain Classes of Creditors Pursuant to 11 USC Section 726

Docket 3005

Tentative Ruling:

Tentative for 7/13/21:
Grant. 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
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman
Todd C. Ringstad
Brett Ramsaur
Richard C Donahoo

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

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Andrew Still
Ashley M Teesdale

**United States Bankruptcy Court
Central District of California
Santa Ana
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Tuesday, July 13, 2021

Hearing Room 5B

11:00 AM

8:21-10588 Gregory Edward Smith and Erin Marie Smith

Chapter 7

**#7.00 Motion to Avoid Lien Under 11 U.S.C. Section 522(f) And, If Applicable, For Turnover Of Property (Personal Property)
(cont'd from 6-29-21)**

Docket 11

Tentative Ruling:

Tentative for 7/13/21:
Has this been settled?

Tentative for 6/29/21:
Off calendar in view of stipulation entered June 7?

Tentative for 5/25/21:
Continue to coincide with hearing on objection to exemption June 29 @ 11:00. More briefing is expected on the question of whether under any circumstances a bankruptcy exemption, and thus logically a 522(f) motion, can be asserted successfully in property that is not property of the estate, such as corporate property of a wholly-owned professional corporation. Normally the estate holds only the shares, not the individual items of corporate property. On the other hand, California's statute suggests the "wildcard" of CCP§703.140(b)(5) can be asserted in "any property" without clarification that the judgment debtor holds title or even an interest ? Would assignment to mediation assist?

Party Information

Debtor(s):

Gregory Edward Smith

Represented By
Eliza Ghanooni

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

11:00 AM

CONT... Gregory Edward Smith and Erin Marie Smith

Chapter 7

Joint Debtor(s):

Erin Marie Smith

Represented By
Eliza Ghanooni

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 13, 2021

Hearing Room 5B

11:00 AM

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

Chapter 13

#8.00 Michael Kaplan, Stephan Andranian, And Vogt Resnick & Sherak, LLP's Motion For Protective Order (OST Signed 6-30-21)

Docket 160

Tentative Ruling:

Tentative for 7/13/21:

The parties obviously have ignored the court's admonition to treat these issues practically. Instead, both sides seemingly have made only perfunctory efforts at mediation in favor of concentrating on their respective litigation positions. Debtors are correct that financial wherewithal is relevant to questions of punitive damages. Since this is an individual case, such damages are possible. See §362(k). Whether they are warranted is not yet decided, but that fact does not amount to a reason for a protective order. See *In re Johnson*, 580 B.R. 766, 770 (S.D. Ohio 2018). Consequently, movants' arguments that such issues are irrelevant or premature is overruled.

Regarding the time, manner and place of deposition, the court is distressed that counsel cannot agree to even such basic things without court intervention. Ordinary civility seems entirely lacking here, and that attitude is proving costly. Arguments advanced by the movants then about what might be "more convenient", more cost efficient or what might (or might not) be impacted by the waning COVID pandemic, are not sufficiently substantiated here and thus are overruled.

The court notes that official lockdown measures in California and in the Central District have been lifted, and this court is disinclined to make up rules based on the vague allegations offered here. We apparently must default to ordinary, pre-pandemic rules of civil procedure concerning location and timing of depositions and subpoenas, with all the attendant risks/costs (assuming the parties cannot agree to simple accommodations).

The motion is denied. The parties again are admonished to consider the practical end of things, especially debtors' counsel. If this case gets drowned in administrative fees, it will not necessarily go well for anyone.

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Tuesday, July 13, 2021

Hearing Room 5B

11:00 AM

CONT... James G. Caringella and Kathleen J. Caringella

Chapter 13

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

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

Wednesday, July 14, 2021

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5B

10:00 AM

8:00-00000

Chapter

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ZoomGov meeting number: 160 856 6561

Password: 711499

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 14, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, July 14, 2021

Hearing Room

5B

10:00 AM

8:20-11560 Joe Anthony Santa Maria

Chapter 7

#1.00 STATUS CONFERENCE Re: United States Of America's Motion To Convert Case From Chapter 7 To Chapter 11 Pursuant to 11 U.S.C. § 706(b) (set from hrg held on 4-06-21 per mtn to convert case from ch 7 to 11 pursuant to 11 usc section 706(b))

Docket 43

*** VACATED *** REASON: OFF CALENDAR - CASE CONVERTED TO CHAPTER 13 ON 7-08-21

Tentative Ruling:

Tentative for 4/6/21:

The IRS moves to convert debtor, Joe Anthony Santa Maria's ("Debtor") case from chapter 7 to chapter 11 pursuant to 11 U.S.C. §706(b). Debtor opposes the motion.

Debtor opposes the motion on grounds that: (1) The motion misstates issues of fact such as the contents of Debtor's Schedule I and J; (2) The IRS's motion is really an improper end-run around 11 U.S.C. §707(b); (3) The IRS's motion misstates the balancing of interests; and (4) that the motion, if approved, would amount to involuntary servitude, which is prohibited by the Thirteenth Amendment to the U.S. Constitution.

Factual Background:

On May 30, 2020, Debtor filed a bankruptcy petition seeking relief under chapter 7 of the

Bankruptcy Code. According to his schedules, the Debtor has accrued a total of \$130,515.72 in non-consumer debt, with over 90% of it in tax debt. Of this amount, \$121,041.72 is in unpaid tax debt owed to the IRS, and \$9,474 in non-priority unsecured debt. The tax debt on the Debtor's schedules

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10:00 AM

CONT... Joe Anthony Santa Maria

Chapter 7

totals 92.7% of the total unsecured debt, which includes as follows:

- (1) Franchise Tax Board 2017 and 2018: \$3,590.04
- (2) Franchise Tax Board 2013: \$6,253.72
- (3) IRS 2010, 2011, 2013, 2014, 2015, 2016: \$79,241.08
- (4) IRS 2017: \$31,956.88

On November 23, 2015, IRS recorded a Notice of Federal Tax Lien for unpaid income taxes owed by the Debtor for tax years 2009, 2010, 2011, and 2013, for a total amount of \$42,421.28, with interest continuing to accrue on these unpaid income taxes. On October 31, 2018, IRS recorded a Notice of Federal Tax Lien for unpaid income taxes owed by the Debtor for tax years 2015, 2016, and 2017 for a total amount of \$42,482.13, with interest continuing to accrue on these unpaid income taxes.

According to Schedules A and B, the Debtor does not own any real property and has personal property valued at \$143,059.58, including \$130,000 in a 457-retirement plan account. The Debtor also has an interest in the pension plan of the City of Los Angeles, and he will receive a monthly stipend upon retirement. On December 14, 2020, Debtor amended his schedules to reflect a net monthly income of \$7,695.32 (reflecting significant payroll deductions) on his Schedule I, and monthly expenses of \$7,696.40 on his Schedule J, resulting in a negative monthly balance of \$1.08

Legal Standards:

Under 11 U.S.C. §706(b), "[o]n request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a

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Wednesday, July 14, 2021

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10:00 AM

CONT...

Joe Anthony Santa Maria

Chapter 7

case under chapter 11 of this title at any time." "The Court has discretion to convert based on its determination of what will most inure to the benefit of all parties in interest." *In re Parvin*, 538, B.R. 96, 101-102 (Bankr. W.D. Wash. 2015). "Section 706(b) does not provide guidance regarding the factors a court should consider. Since there are no specific grounds for conversion, a court should consider anything relevant that would further the goals of the Bankruptcy Code." *Id.* at 102 (internal citation and quotation marks omitted). Courts have considered a variety of factors in deciding whether to convert a case from chapter 7 to chapter 11 under § 706(b). *Id.* Among the factors considered are whether the debtor can propose a confirmable plan, whether the primary purpose of the chapter 11 is to liquidate or reorganize, and whether conversion benefits all parties in the case. *Id.* (internal citations and quotation marks omitted). A debtor's ability to pay typically is a starting point in the analysis, however, since the whole reason for asking [for] a case to be converted is the assumption that creditors would receive more in a chapter 11 than a chapter 7. *Id.* (internal citations and quotation marks omitted). See also *In re Schlehuber*, 489 B.R. 570, 574 (9th Cir. B.A.P. 2013) ("The Debtor's ability to fund a Chapter 11 plan if he chooses to do so was certainly an important and relevant consideration.").

Contested Issues of Fact:

Debtor asserts that he has amended his schedules three times, with the latest being in mid-December of 2020, which Debtor amended to reflect a steep drop in income. However, Debtor asserts, the IRS chooses to focus on Debtor's past income, which was considerably higher. Debtor argues that, as evidenced by the latest amendment to his schedules, his monthly expenses surpass his monthly income, but the IRS, based on an outdated version of Debtor's schedules, insists his net income is \$2,393.

Debtor also argues that because the automatic stay is still in effect, Debtor is not currently required to make payments on the priority tax debt, contrary to the IRS's assertion in its motion.

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10:00 AM

CONT... Joe Anthony Santa Maria

Chapter 7

In reply, IRS asserts that even using the figures from Debtor's latest amended schedules, there is ample income available to pay the priority tax debt and Debtor's unsecured creditors. To arrive at this conclusion, IRS argues that, at the very least, Debtor should consider his child support payments (reportedly to terminate in July of 2021), and the priority tax payments. Together, that amounts to \$2,175.68. Multiplied over a 60-month period yields a total of \$130,540.80, which would be sufficient to pay the IRS debt of \$123,909, with the remainder available to pay unsecured creditors. IRS argues further that if Debtor were to adjust certain voluntary payroll deductions, there would be even more funds available for unsecured creditors, which should lead to the conclusion that Debtor has adequate means to fund a straightforward chapter 11 plan.

The IRS's reconciliation of the factual dispute is effective in demonstrating that Debtor could, rather easily, fund a chapter 11 plan. Thus, to be credible, any argument that Debtor cannot fund a chapter 11 plan would require another drastic negative change in circumstances. The IRS also notes that as of March 2021, Debtor's annual base salary is increasing from \$122,948.80 to \$133,092.08.

Does The Motion Improperly Seek To Circumvent The Bankruptcy Code?

Debtor argues that this motion is merely an attempted end-run around 11 U.S.C. §707(b) because, Debtor argues, since §707(b) might create hurdles for the IRS, the IRS is attempting to sidestep those hurdles by cloaking the motion as one brought under §706(b). Debtor cites some authority standing for the proposition that in cases where involuntary conversion to chapter 11 is sought, §707(b) is usually the proper statutory mechanism. However, Debtor cites no authority that such relief cannot be sought pursuant to §706(b). After all, why would Congress have included it in the first place and refused to remove it from the code altogether? As cited above, courts in this circuit and elsewhere consider conversion from chapter 7

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CONT... **Joe Anthony Santa Maria**

Chapter 7

to chapter as perfectly acceptable under §706(b). The court does not see anything nefarious about the IRS using §706(b) to achieve its desired end. On the contrary, although the IRS concedes that involuntary conversion might not be to Debtor's immediate short-term benefit, IRS argues that courts from several circuits have found a benefit to a debtor when the debtor has significant unresolved tax liabilities, domestic support arrearages, or other non-dischargeable liabilities that would survive a chapter 7 discharge but could be addressed through a chapter 11 plan. See *In re Karlinger-Smith*, 544 B.R. 126, 134 (Bankr. W.D. Tex. 2016); see also *In re Decker*, 535 B.R. 841-42 (Bankr. D. Alaska 2015); and *In re Baker*, 503 B.R. 751,758 (Bankr.M.D.Fla. 2013). In those types of debt scenarios, "conversion may not give Debtors immediate relief, but could ultimately result in a better fresh start." *In re Decker*, 535 B.R. at 843.

The court notes that Debtor is claiming that he currently has a negative income stream, but that negative income stream seems caused, in part, by expenses that are either voluntary such as certain payroll deductions for retirement plans , or temporary (child support, set to terminate in three months' time). All told, it seems eminently plausible that Debtor would be able to fund a plan under chapter 11. Stated another way, nothing in the record indicates categorically that Debtor could not fund a plan under chapter 11, and thus, there seems little risk of immediate re-conversion to chapter 7. Indeed, it is not at all clear to the court why Debtor is so against this approach as it would seem a good way for Debtor to deal with what appears to be , at least in good part, non-dischargeable debt.

If the case is converted to chapter 11 and Debtor is obliged to fund the plan as described above (or differently), it is obvious that creditors, and particularly the IRS, would benefit by having their claims paid either in full or nearly in full. Debtor provides no analysis for what creditors might receive in a hypothetical liquidation under chapter 7. It is perhaps worth noting that the chapter 7 trustee, Richard Marshack, filed a "no-asset" report on December 18, 2020, which might give some indication of how much (or little) creditors

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CONT... **Joe Anthony Santa Maria**

Chapter 7

might receive in a liquidation proceeding. However, Debtor does make a policy argument that if the motion is granted, it would produce a chilling effect among those with primarily non-consumer debt. Debtor would likely not be trapped in a chapter 11 plan as this court would still have discretion to re-convert the case to chapter 7 should sufficient cause arise because Debtor would remain a party in interest. Thus, the balance of interests seems to favor conversion as the estate's creditors stand a plausible chance of payment in full, and Debtor can likely pay the claims without being particularly financially hobbled.

The Thirteenth Amendment:

Debtor argues that being compelled to fund a plan would necessarily involve being obliged to work and pay his creditors from his wages, and would, therefore, be akin to or indistinguishable from involuntary servitude, which is generally prohibited by the Thirteenth Amendment. In *In re Gordon*, 465 B.R. 683 (Bankr. N.D. Ga. 2012), the court was confronted with the same argument, that conversion to chapter 11 under §706 violated the proscription on involuntary servitude. The court noted that "courts have consistently found the involuntary servitude standard is not so rigorous as to prohibit all forms of labor that one person is compelled to perform for the benefit of another. The Thirteenth Amendment does not bar labor that an individual may, at least in some sense, choose not to perform, even when the consequences of that choice are exceedingly bad." *Id.* at 696 (internal citations and quotation marks omitted). The court also noted that the *sine qua non* of involuntary servitude is compulsion through physical coercion or legal sanction. *Id.* In *In re Gordon*, the debtor put forth the following examples of how conversion of the case could lead to involuntary servitude:

(i) The debtor's post-petition earnings become property of the estate and must be used as necessary for execution of a confirmed plan. 11 U.S.C. §§ 1115, 1123(a)(8).

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CONT... Joe Anthony Santa Maria

Chapter 7

(ii) Under 11 U.S.C. § 1129(a)(15), if an unsecured creditor objects to a proposed plan, the debtor must show that the amount of his projected disposal income for at least five years is being paid under the plan.

(iii) The debtor has no absolute right to dismiss or convert his case pursuant to 11 U.S.C. § 1112 since the Chapter 11 case was not voluntarily selected by the debtor.

(iv) A creditor can propose a plan under 11 U.S.C. § 1121(c).

(v) The absolute priority rule may require the debtor to surrender his house and other personal possessions.

(vi) The court may find the debtor in contempt for failure to comply with any confirmed plan and such contempt may be punishable by fine or jail. *Id.* at 697.

The *Gordon* court disagreed that these considerations necessarily implicated Debtor's constitutional rights. "The only effect of converting the case under Section 706(b) is that the Debtor's post-petition earnings become property of the estate, which means that, if he wishes to use those post-petition earnings for non-typical purposes, a request for approval to spend the money must be filed with the Bankruptcy Court and the use must be approved. 11 U.S.C. § 363. Conversion to a Chapter 11 also means the Debtor must file certain operating reports with the U.S. Trustee and pay a U.S. Trustee's fee. But this is all that happens upon the conversion of the case. This is different from a Chapter 13 case where, merely upon the filing of the case, the debtor is required to begin making payments and must

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CONT... **Joe Anthony Santa Maria**

Chapter 7

immediately file a plan with a minimum length of three years." *Id.*

The Gordon court noted that there was also a ripeness issue, which IRS argues also exists here. The court in Gordon observed, "[t]he Debtor argues payment of his projected disposable income for five years will happen with 'virtual certainty' and in fact is the purpose of the Motion to Convert. There is no doubt that the Debtor's ability to make payments to his creditors is the primary reason for conversion of this case, but the conversion itself does not cause the payment to occur. The Debtor can continue to refuse to offer a payment plan to his creditors if he chooses, and the Court can decide what action to take at the time, based on the facts developed. Perhaps the Debtor's argument is really that it is a 'virtual certainty' he will not propose a repayment plan. If so, that is the Debtor's decision, not the Court's, and the Debtor cannot complain about the consequences of that decision." *Id.* at 698.

In sum, the court finds much to agree with in the Gordon analysis. Furthermore, Debtor has not cited a single case standing remotely for the proposition that conversion to chapter 11 under §706(b) is unconstitutional as violative of the Thirteenth Amendment or any related statute or Act. Thus, the court is unconvinced at this time that Debtor will be forced into a state of involuntary servitude by conversion to chapter 11. The court also notes that Debtor likely has the ability to fund a plan to pay his creditors in full (or nearly so) without undue hardship, and the balance of interests favors conversion to chapter 11. Moreover, the court has not yet seen any reason for the Debtor not to want to use a plan to achieve a manageable resolution of what are otherwise, at least in large portion, non-dischargeable debts.

Grant. Schedule status conference in 90 days.

Party Information

Debtor(s):

Joe Anthony Santa Maria

Represented By

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Chapter 7

Nicholas W Gebelt

Trustee(s):

Richard A Marshack (TR)

Pro Se

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10:00 AM

8:12-10105 Walldesign, Inc., a subchapter S corporation

Chapter 11

#2.00 Motion Seeking Entry of an Order Authorizing the Trustee to Abandon the Debtor's Books and Records to the Movants Pursuant to 11 U.S.C. Section 554(b)

Docket 2496

Tentative Ruling:

Tentative for 7/14/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Walldesign, Inc., a subchapter S

Represented By

Marc J Winthrop
Garrick A Hollander
Kavita Gupta
Jill M Holt Golubow
Peter W Lianides
Robin E Paley
Jeffrey S Kaufman
Andrew B Levin
Alastair M Gesmundo

**United States Bankruptcy Court
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8:20-11611 AEPC Group, LLC

Chapter 11

#3.00 Final Fee Application For The Period June 4, 2020 through June 30, 2021:

**JEFFREY S. SHINBROT, APLC, DEBTOR'S GENERAL CHAPTER 11
COUNSEL**

FEES: \$123,187.50

EXPENSES: \$2,950.31

Docket 184

Tentative Ruling:

Tentative for 7/14/21:

Allow as prayed. Appearance: optional

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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10:00 AM

8:21-10863 Nalu's Group, Inc.

Chapter 11

**#4.00 Confirmation Of Chapter 11 Plan
(set from s/c hrg held on 5-12-21)**

Docket 1

Tentative Ruling:

Tentative for 7/14/21:
Confirm.

Tentative for 5/12/21:
The court has reviewed the reports. No issues noted. When will we see a plan?

Party Information

Debtor(s):

Nalu's Group, Inc.

Represented By
Michael Jones

Trustee(s):

Robert Paul Goe (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#5.00 Plan Confirmation Hearing Re:Plan Of Reorganization
(cont'd from 05-26-21 per order apprvg. stip. to cont. the hrg on
confirmation of debtor's ch 11 plan entered 5-25-21)

Docket 342

Tentative Ruling:

Tentative for 7/14/21:

No status report? Will a confirmation be requested or are parties still in mediation? Continue to August 11 @ 10:00AM.

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

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CONT... Ron S Arad

Chapter 11

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 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.

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

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10:00 AM

8:18-10486 Ron S Arad

Chapter 11

**#6.00 Objection to Claims Of RBS Citizens, N.A., Citizens Financial Group, Inc
(cont'd from 5-26-21 per order approvng stip. to cont. objection to claims
entered 5-25-21)**

Docket 379

Tentative Ruling:

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Movant(s):

Ron S Arad

Represented By
G Bryan Brannan

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8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1607575960>

ZoomGov meeting number: 160 757 5960

Password: 932147

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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Chapter

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: <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

Docket 0

Tentative Ruling:

- NONE LISTED -

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10:00 AM

8:18-10582 David R. Garcia

Chapter 7

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

**#1.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(con't from 5-13-21 per order on stipulation to cont pretrial conference entered 5-10-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL
CONFERENCE AND DEADLINE TO FILE PRETRIAL MOTIONS AND
STAY ALL ADVERSIAL PROCEEDINGS ENTERED 7-12-21**

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.

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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
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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

#2.00 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 6-10-21 per order appr. stip to con't entered 5-26-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-26-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL CONFERENCE ENTERED 6-29-21**

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
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10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#3.00 PRE-TRIAL CONFERENCE RE: Motion For Administrative Claim By Terrace Tower Orange County, LLC
(set from s/c hrg held on 9-01-20)
(cont'd from 7-08-21 per order approving stip to cont. dates re: mtn for administrative clm by Terrace Tower Orange County, LLC pending mediation entered 6-09-21)**

Docket 571

Tentative Ruling:

Tentative for 7/15/21:
Set for trial.

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.

Party Information

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CONT... BP Fisher Law Group, LLP

Chapter 7

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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10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

**#4.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Limited Objection To And Motion To Disallow Proof Of Claim No. 65 Filed By Specialized Loan Servicing LLC
(set from obj. to & mtn to disallow proof of clm no. 65 hrg held on 8-11-20)
(cont'd from 5-27-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select protfolio servicing, inc. for extension of deadlines in scheduling order entered 4-30-21)**

Docket 258

***** VACATED *** REASON: CONTINUED TO 9-23-21 AT 10:00 A.M.
PER AMENDED ORDER APPROVING JOINT STIPULATION
BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION &
SELECT PORTFOLIO SERVICING, INC. FOR EXTENSION OF
DEADLINES IN SCHEDULING ORDER ENTERED 6-04-21**

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.

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.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

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10:00 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
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10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#5.00 PRE-TRIAL CONFERENCE RE: Lexington National Insurance Corporation's Objection To And Motion To Disallow Proof Of Claim No. 67 Filed By Select Portfolio Servicing, Inc.
(set from s/c hrg held on 8-11-20)
(cont'd from 5-27-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select portfolio servicing, inc. for extension of deadlines in scheduling order entered 4-30-21)

Docket 260

*** VACATED *** REASON: CONTINUED TO 9-23-21 AT 10:00 A.M.
PER AMENDED ORDER APPROVING JOINT STIPULATION
BETWEEN LEXINGTON NATIONAL INSURANCE CORPORATION
AND SELECT PORTFOLIO SERVICING, INC. FOR EXTENSION OF
DEADLINES IN SCHEDULING ORDER ENTERED 6-04-21

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

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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10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#6.00 PRE-TRIAL 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
(set from s/c hrg. held on 8-11-20)
(cont'd from 5-27-21 per order approving joint stip. between lexington national insurance corporation, specialized loan servicing llc, and select portfolio servicing, inc. for extension of deadlines in scheduling order entered 4-30-21)

Docket 476

*** VACATED *** REASON: CONTINUED TO 9-23-21 AT 10:00 A.M.
AMENDED ORDER APPROVING JOINT STIPULATION BETWEEN
LEXINGTON NATIONAL INSURANCE CORPORATION AND SELECT
PORTFOLIO SERVICING, INC. FOR EXTENSION OF DEADLINES IN
SCHEDULING ORDER ENTERED 6-04-21

Tentative Ruling:

Tentative for 8/11/20:
Same schedule as in #15.

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

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11:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:20-01142 Marshack v. CapCall, LLC et al

#7.00 STATUS CONFERENCE RE: First Amended Complaint For: (1) Declaratory Relief; (2) Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550; (3) Unjust Enrichment / Disgorgement; (4) Avoidance and Preservation of Claims Pursuant to 11 U.S.C. §§ 502, 506, 544, and 510(c); (5) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 548 and 550; (6) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544, 548 and 550; (7) Usury; (8) Injunction; (9) Determination of Liens Pursuant to 11 U.S.C. §§ 502, 506 and 551; (10) Unconscionability; (11) Negligence Per Se - Violation of California Finance Lending Law; (12) Violation of California Business and Professions Code Section 17200; and (13) Fraud (set from another summon issued on 10-16-20 per amended complaint) (cont'd from 5-13-21 per order approving stip between plaintiff and defendants capcall, llc, corefund capital, llc gma usa, llc, and yes funding services, llc to cont. status conference and hearing on motion to dismiss entered 4-30-21)

Docket 13

*** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
ADVERSARY CASE ENTERED 6-14-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski
Timothy W Evanston

Corefund Capital, LLC

Pro Se

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11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

GMA USA, LLC

Pro Se

YES Funding Services, LLC

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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#: 8:20-01142 Marshack v. CapCall, LLC et al

#8.00 Motion To Dismiss First Amended Complaint Pursuant To Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6)
(cont'd from 5-13-21 per order approving stip between plaintiff and defendants capcall,llc, corefund captial, llc, gma usa, llc and yes funding services, llc to cont. hrg on mtn to dismiss entered 4-30-21)

Docket 20

***** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
ADVERSARY CASE ENTERED 6-14-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

CapCall, LLC

Represented By
Lei Lei Wang Ekvall
Shanna M. Kaminski
Timothy W Evanston

Corefund Capital, LLC

Represented By
Lei Lei Wang Ekvall

GMA USA, LLC

Represented By
Lei Lei Wang Ekvall

YES Funding Services, LLC

Represented By
Lei Lei Wang Ekvall

Plaintiff(s):

Richard A. Marshack

Represented By
Robert P Goe

**United States Bankruptcy Court
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11:00 AM

CONT... i.i. Fuels, Inc.

Chapter 7

Rafael R Garcia-Salgado

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe
Rafael R Garcia-Salgado

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11:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

#9.00 Motion For Order Relieving Mark Anchor Albert & Assoc. As Debtors' And Defendants' Counsel

Docket 357

Tentative Ruling:

Tentative for 7/15/21:
Grant.

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

Cheri Fu

Represented By
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By
Mark Anchor Albert

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

BANK OF AMERICA, N.A.

Represented By
William S Brody

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CONT... Cheri Fu

Chapter 7

Trustee(s):

James J Joseph (TR)

Represented By

James J Joseph (TR)

Lisa Nelson

James Andrew Hinds Jr

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Hearing Room 5B

11:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#10.00 Motion For Judgment On The Pleadings (FRCP 12(c))

Docket 71

Tentative Ruling:

Tentative for 7/15/21:

This is defendants/debtors, Fariborz and Natasha Wasoughkia's ("Defendants") motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). The motion is opposed by plaintiff, Bijan Jon Mahdavi ("Plaintiff"). It should be noted at the outset that Defendants are *in Pro Se*.

This court is already familiar with this case. Back on June 6, 2019, this court issued a detailed (and adopted) tentative ruling denying Defendants' Rule 12(b)(6) motion seeking to dismiss the then active original complaint. Plaintiff has since filed a similar amended complaint. As far as can be discerned, the main difference between the original and amended complaints is that the amended complaint adds two causes of action under §§523(a)(2)(B)[false financial statement] and 523(a)(3)[claim not listed in schedules to allow timely adjudication].

A motion for judgment on the pleadings may be granted only if, taking all the allegations in the pleading as true and construing them in the light most favorable to the non-moving party, there is no disputed issue of material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Further, for purposes of a Rule 12(c) motion, the allegations of the moving party which have been denied are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989).

Here, there does not appear to be any reason to disturb the court's ruling on the motion to dismiss from 2019, and the detailed analysis therein is incorporated by reference. As Defendants failed to convince the court to dismiss the original complaint, it follows that Defendants again fail in this motion given the relative similarities of the legal standards. The court will,

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 15, 2021

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CONT...

Fariborz Wosoughkia

Chapter 7

however, construe the motion as one for summary judgement under Rule 56. The court will also analyze the two additional causes of action.

Under 11 U.S.C. §523(a)(2)(B), "[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—(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive[.]"

The amended complaint asserts that when the promissory note was finally written on September 11, 2013, Defendants had already initiated their bankruptcy proceedings, which Plaintiff argues would have allowed Defendants to discharge the debt owed to Plaintiff. Plaintiff asserts that Defendants never disclosed the existence of the bankruptcy at the time the promissory note was written. Again, as noted in this court's previous ruling, Plaintiff argues that his reliance on the promissory note was reasonable at the time because of the existing friendship between the parties. Plaintiff also alleges that the bankruptcy filing was likely not disclosed at the time of writing because Defendants did not want others in the congregation to know of Defendants' financial difficulties. Viewing the allegations in the light most favorable to Plaintiff as the nonmovant, which the court must do, there does not seem to be anything that would conclusively establish the unreasonableness of Plaintiff's reliance on the promissory note. Thus, the motion can be denied as to this cause of action.

Under 11 U.S.C. §523(a)(3), "[a] discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an

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individual debtor from any debt—

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(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request[.]"

Here, as noted throughout the original complaint and the amended complaint, Plaintiff alleges that Defendants did not list Plaintiff as an unsecured creditor, and thus Plaintiff did not receive timely notice of the bankruptcy filing. As noted above and in this court's original ruling, Plaintiff believes that the failure to list him as an unsecured creditor was intentional and at least partially to conceal Defendants' financial difficulties from the congregation. Plaintiff also notes that Defendants failed to disclose the \$3,000 they paid to Plaintiff (an insider at the time) shortly before the petition date because, Plaintiff argues, if that payment had been listed in the Statement of Financial Affairs (SOFA), the balance owing on the debt would have had to be listed in the SOFA as well, which would have alerted their counsel and the trustee to the existence of a rather large undisclosed debt. Plaintiff argues that the failure to schedule the debt and notify Plaintiff of the bankruptcy filing is evidence of an intent to defraud. The allegations, taken as true and viewed in the light most favorable to Plaintiff as the nonmovant, would likely sustain a claim for relief under §523(a)(3). In its ruling on the 12(b)(6) motion, the court found it puzzling why a cause of action under this subsection had not been brought in the first place as there seemed to be a straightforward application

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CONT... Fariborz Wosoughkia
on the facts as pled.

Chapter 7

Thus, the two additional causes of action survive the Rule 12(c) motion for judgment on the pleadings and the motion should be denied.

Defendant's motion reads more like a Rule 56 motion for summary judgment, imploring the court to look beyond the pleadings and to consider extrinsic evidence. Indeed, a motion brought under Rule 12(c) must be treated as one brought under Rule 56 when resolution of an issue requires going beyond the pleadings. *See Hal Roach Studios, Inc.*, 896 F.2d at 1550. The obvious problem with this approach from Defendants' point of view is the stringent legal standards imposed by Rule 56. To prevail on summary judgment, there must be **no** disputed issues of material fact such that one party is entitled to judgment as a matter of law.

Even a cursory glance at the pleadings in this motion will reveal the depth of disagreement among many issues of material fact. For example, Defendant asserts that the promissory note was unlawfully extracted from him through use of fear, intimidation, and even physical coercion(?), a charge Plaintiff denies. As another even more obvious example, Defendant denies any fraudulent intent and points out the lack of actual evidence of fraudulent intent beyond the allegations in the amended complaint. However, issues of intent are necessarily fact intensive inquiries, and are, therefore, inappropriate for summary adjudication. Finally, even the character of the alleged debt is disputed. Defendants insist that the transfer of money from Plaintiff was an investment, while Plaintiff insists it was a loan. The terms of the transfer were not originally reduced to a writing, which makes the determination of the character of the transfer necessarily reliant on the relative credibility of the parties and any fact witnesses. In other words, this is yet another critical issue that is inappropriate for summary adjudication.

On the question of sanctions, as noted, Defendants are self-represented and, thus, it is unsurprising they are not intimately familiar with the complexities and nuances of the Federal Rules of Civil Procedure. Defendants assert that they are presently unable to afford counsel. The court, therefore, can excuse the shortcomings in Defendants' motion as being made from ignorance rather than a bad faith attempt to unnecessarily delay

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Fariborz Wosoughkia

Chapter 7

adjudication and drive up litigation costs. Thus, although this motion comes close to being frivolous given this court's prior ruling on Defendants' motion to dismiss, no sanctions will issue at this time. Defendants must, however, contend with prescribed rules and procedure at trial and should not expect further indulgence.

Deny

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By

Craig J Beauchamp

Trustee(s):

Richard A Marshack (TR)

Represented By

Michael G Spector

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 15, 2021

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8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability
Of Debt Based On Fraud And Objecting To Discharge Of Debtors
(cont'd from 7-01-21)**

Docket 1

Tentative Ruling:

Tentative for 7/15/21:
See #10.

Tentative for 7/1/21:
Continue to July 15 @ 11:00AM to coincide with motion for judgment on
pleadings.

Tentative for 4/29/21:
Is it really true that the parties are unable to stipulate to any facts? When will
the discovery dispute be determine? It does not sound like this case is ready
to be set for trial at this point. Should another continuance be given?

Tentative for 3/11/21:
Status?

Tentative for 1/28/21:
All the deadlines have passed but no significant status report has been
received despite several continuances. Status?

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Chapter 7

Appearance: required

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
Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

**United States Bankruptcy Court
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Santa Ana
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CONT... Fariborz Wosoughkia

Chapter 7

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, July 20, 2021

Hearing Room 5B

10:00 AM

8:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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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/1605172064>

ZoomGov meeting number: 160 517 2064

Password: 331968

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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Santa Ana
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Tuesday, July 20, 2021

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
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM
8:00-00000

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/1605907206>

ZoomGov meeting number: 160 590 7206

Password: 046227

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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**United States Bankruptcy Court
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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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proceedings, please:

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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

**United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM

8:21-11054 Kenneth D Leslie

Chapter 13

#1.00 Confirmation Of Chapter 13 Plan

Docket 2

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M.
PER COURT OWN MTN**

Party Information

Debtor(s):

Kenneth D Leslie

Represented By
Andy C Warshaw

Movant(s):

Kenneth D Leslie

Represented By
Andy C Warshaw

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM

8:21-11069 Cynthia Lynn Yee

Chapter 13

#2.00 Confirmation Of Chapter 13 Plan

Docket 2

*** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M.
PER COURT OWN MTN

Party Information

Debtor(s):

Cynthia Lynn Yee

Represented By
Rex Tran

Movant(s):

Cynthia Lynn Yee

Represented By
Rex Tran
Rex Tran
Rex Tran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM

8:21-11076 Leticia Nedeau

Chapter 13

#3.00 Confirmation Of Amended Chapter 13 Plan

Docket 18

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M.
PER COURT'S OWN MOTION**

Party Information

Debtor(s):

Leticia Nedeau

Represented By
Trang Phuong Nguyen

Movant(s):

Leticia Nedeau

Represented By
Trang Phuong Nguyen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM

8:21-11094 Francesca Silva Morales

Chapter 13

#4.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M
PER COURT OWN MTN**

Party Information

Debtor(s):

Francesca Silva Morales

Represented By
Marlon B Baldomero

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM

8:21-11103 Kristen Marie Duggins

Chapter 13

#5.00 Confirmation Of Chapter 13 Plan

Docket 2

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M.
PER COURT OWN MTN**

Party Information

Debtor(s):

Kristen Marie Duggins

Represented By
Anthony B Vigil

Movant(s):

Kristen Marie Duggins

Represented By
Anthony B Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM

8:21-11112 Robert W Castillo and Cynthia L Castillo

Chapter 13

#6.00 Confirmation Of The Amended Chapter 13 Plan

Docket 14

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M.
PER COURT OWN MTN**

Party Information

Debtor(s):

Robert W Castillo

Represented By
Julie J Villalobos

Joint Debtor(s):

Cynthia L Castillo

Represented By
Julie J Villalobos

Movant(s):

Robert W Castillo

Represented By
Julie J Villalobos

Cynthia L Castillo

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

1:30 PM

8:21-11140 Enrique Martinez

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan

Docket 2

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M
PER COURT OWN MTN**

Party Information

Debtor(s):

Enrique Martinez

Represented By
Richard L. Sturdevant

Movant(s):

Enrique Martinez

Represented By
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

1:30 PM

8:21-11180 Dominic Caruso

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30
P.M. PER COURT OWN MTN**

Party Information

Debtor(s):

Dominic Caruso

Represented By
Charles J Brash

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 5B

1:30 PM

8:21-11210 Bao Dang Le

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M
PER COURT OWN MTN**

Party Information

Debtor(s):

Bao Dang Le

Pro Se

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 5B

1:30 PM

8:21-11233 Michael Roberts Yates

Chapter 13

#10.00 Confirmation Of Chapter 13 Plan

Docket 0

*** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 1:30 P.M.
PER COURT OWN MTN

Party Information

Debtor(s):

Michael Roberts Yates

Represented By
Anthony P Cara

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Santa Ana
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Wednesday, July 21, 2021

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#11.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 3-17-21)

Docket 69

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 3:00 P.M.
PER COURT OWN MTN**

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
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Wednesday, July 21, 2021

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

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

Docket 76

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 3:00 P.M
PER COURT OWN MTN**

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
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Wednesday, July 21, 2021

Hearing Room 5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#13.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision
(cont'd from 4-14-21)

Docket 59

*** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 3:00 P.M.
PER COURT OWN MTN

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 21, 2021

Hearing Room 5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

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

Docket 68

***** VACATED *** REASON: RE-SCHEDULED TO 7-28-21 AT 3:00 P.M.
PER COURT OWN MTN**

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 21, 2021

Hearing Room 5B

3:00 PM

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

Chapter 13

#15.00 OSC Re Contempt And Damages, Including Punitive Damages, For Violation Of The Stay Is Issued Re: Motion For Order Declaring Michael J. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 1987 And Stephan Andranian In Violation Of The Automatic Stay Pursuant To 11 U.S.C. §362; Enjoining Prosecution Of Complaint In Arbitration; And For An Order To Show Cause Re: Contempt Against Michael R. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 187 And Stephan Andranian For Violating The Automatic Stay
**(osc set from hrg held on 2-17-21 re: motion)
(cont'd from 5-19-21 per order approving stip. to cont. osc entered 4-16-21)**

Docket 127

***** VACATED *** REASON: RE-SCHEDULED TO 8-18-21 AT 3:00 P.M.
PER COURT OWN MTN**

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

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

Thursday, July 22, 2021

Hearing Room 5B

10:00 AM

8:00-0000

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

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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/1601456843>

ZoomGov meeting number: 160 145 6843

Password: 681837

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
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Thursday, July 22, 2021

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:

- NONE LISTED -

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

Thursday, July 22, 2021

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 PRE-TRIAL CONFERENCE RE: Amended Adversary Complaint of Nondischargeability and Exception from Discharge of Debts for Case KC069896 Samec vs. Griffithe et.al.
(set from s/c hrg held on 6-25-20)**

Docket 47

***** VACATED *** REASON: CONTINUED TO 7-29-21 AT 10:00 A.M.
PER COURT'S OWN MTN 4-02-21**

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.

Please be advised that CourtCall has announced reduced 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

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

Thursday, July 22, 2021

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

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.

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, July 22, 2021

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, July 22, 2021

Hearing Room

5B

10:00 AM

8:21-11775 Fullerton Pacific Interiors, Inc.

Chapter 11

#2.00 Emergency Motion for Order: (1) Authorizing Payment of Prepetition Wage and Salaries, and (2) Authorizing Endorsement and Delivery of Joint Checks to Materials Vendors

Docket 10

Tentative Ruling:

Tentative for 7/22/21:

No tentative pending response, if any.

Party Information

Debtor(s):

Fullerton Pacific Interiors, Inc.

Represented By
Donald W Reid

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**

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

8: -

Chapter

#0.00 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/1614832376>

ZoomGov meeting number: 161 483 2376

Password: 575786

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

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: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

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

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**SANTANDER CONSUMER INC. DBA CHRYSLER CAPITAL
Vs
DEBTORS**

Docket 73

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION RE: ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 7-09-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Thompson

Represented By
Julie J Villalobos

Joint Debtor(s):

Linda C. Thompson

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

8:21-11084 Matias Mendoza

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA MOTOR CREDIT CORPORATION
Vs.
DEBTOR**

Docket 13

Tentative Ruling:

Tentative for 7/27/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Matias Mendoza

Represented By
Richard L. Sturdevant

Movant(s):

Toyota Motor Credit Corporation

Represented By
Austin P Nagel

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

8:21-11222 Jose Guadalupe Godinez Ramirez and Elizabeth Salgado

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**AMERICAN HONDA FINANCE CORPORATION
Vs.
DEBTORS AND WENETA M.A. KOSMALA, CHAPTER 7 TRUSTEE**

Docket 23

Tentative Ruling:

Tentative for 7/27/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Jose Guadalupe Godinez Ramirez

Represented By
Christopher J Lauria

Joint Debtor(s):

Elizabeth Salgado Ignacio

Represented By
Christopher J Lauria

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

8:21-11482 Carlos Alberto Morgado Martinez and Cristy Maizterra

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**CREDIT CORPORATION
Vs.
DEBTORS**

Docket 9

Tentative Ruling:

Tentative for 7/27/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Carlos Alberto Morgado Martinez

Represented By
Marlin Branstetter

Joint Debtor(s):

Cristy Maizterra

Represented By
Marlin Branstetter

Movant(s):

Toyota Motor Credit Corporation

Represented By
Austin P Nagel

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 27, 2021

Hearing Room 5B

10:30 AM

8:19-12479 Judie Kay Brust

Chapter 13

#5.00 Motion for relief from the automatic stay REAL PROPERTY
[RE: 12791 Sylvan St, Garden Grove, CA 92845]
(cont'd from 6-22-21)

**CHAMPION MORTGAGE COMPANY
Vs.
DEBTOR**

Docket 43

Tentative Ruling:

Tentative for 7/27/21:
Grant absent current status or APO.

Tentative for 6/22/21:
Grant absent post confirmation current status or agreed APO.

Party Information

Debtor(s):

Judie Kay Brust

Represented By
Christopher J Langley

Movant(s):

Champion Mortgage Company

Represented By
Sean C Ferry
Jenelle C Arnold
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, July 27, 2021

Hearing Room 5B

10:30 AM

8:19-12629 Eduardo Meza

Chapter 13

#6.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 4-20-21)

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs
DEBTOR**

Docket 118

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY - SETTLED BY
STIPULATON ENTERED 6-16-21**

Tentative Ruling:

Tentative for 6/8/21:
Status since last hearing?

Tentative for 4/20/21:
Grant unless current post confirmation or agreed APO.

Appearance: optional

Party Information

Debtor(s):

Eduardo Meza

Represented By
Michael F Chekian

Movant(s):

Deutsche Bank National Trust

Represented By
Eric P Enciso
Sean C Ferry

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

CONT... Eduardo Meza

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

8:20-10181 Marco Brito

Chapter 13

#7.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCH BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR**

Docket 57

Tentative Ruling:

Tentative for 7/27/21:
Grant absent current post confirmation or agreed APO.

Appearance: optional

Party Information

Debtor(s):

Marco Brito

Represented By
Christopher J Langley

Movant(s):

Deutsche Bank National Trust

Represented By
Darlene C Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

8:21-11352 Don Teruo Kojima and Susan Lorraine Kojima

Chapter 11

#8.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-29-21)

**CORY MEREDITH
Vs
DEBTORS**

Docket 15

***** VACATED *** REASON: CONTINUED TO 8/31/21 AT 10:30 A.M.
PER ORDER APPROING STIPULATION FOR ADEQUATE
PROTECTION PAYMENTS ENTERED 7-27-21**

Tentative Ruling:

Tentative for 7/27/21:

Further to the last tentative, are Debtors prepared to make adequate protection payments or otherwise protect movant from a deterioration of its position?

Tentative for 6/29/21:

As near as the court can determine, there has been no compliance with the requirements of FRBP 4001(a), which requires service upon the twenty largest unsecured creditors absent a committee. So, procedurally, a continuance will be required.

On the substantive issues, the parties are about \$4 million apart on alleged FMV of the subject property. But the court must also consider that the movant is in 4th position on the property behind very large senior liens. Debtor does not offer any periodic payment as adequate protection but appears to rely solely upon their perhaps optimistic view of value. This is dangerous and misplaced. This is particularly so, as is reported here, no service is being made upon the senior liens either, which means with the accrual of interest and costs to the seniors any cushion (assuming that one

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

CONT... Don Teruo Kojima and Susan Lorraine Kojima Chapter 11

even exists) is being rapidly eroded. Moreover, implicit in debtors' position (arguing about whether 20%, 10% or maybe even less is "adequate") they would impose all of the risk upon the creditor. This risk may be substantial since it is reported that there was a lengthy attempt to sell prepetition which elicited no offers within the range now being urged. This does not bode well for an extensive delay not supported by any periodic payments. One of the basic precepts of Chapter 11 is the debtor cannot impose (at least not for long) uncompensated risk upon the creditor, and where, as here, the margin for error may be small there is a good possibility the court will find value alone inadequate under these circumstances. Consequently, debtors should use this interim to decide how else protection can be made "adequate" under these circumstances.

Continue to permit compliance with Rule 4001(a).

Party Information

Debtor(s):

Don Teruo Kojima

Represented By
Richard H Golubow

Joint Debtor(s):

Susan Lorraine Kojima

Represented By
Richard H Golubow

Movant(s):

Cory Meredith

Represented By
Sarah M St John

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

Tuesday, July 27, 2021

Hearing Room 5B

10:30 AM

8:21-11152 Ultimate Towing & Recovery, LLC

Chapter 11

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

**JERRY TELLEZ
Vs.
DEBTOR**

Docket 26

Tentative Ruling:

Tentative for 7/27/21:

Grant for purposes of quantifying the claim only or recovery from insurance.

Execution against debtor's other assets must await further order of this court.

Party Information

Debtor(s):

Ultimate Towing & Recovery, LLC

Represented By
Michael R Totaro

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, July 27, 2021

Hearing Room 5B

10:30 AM

8:21-10941 William Scott Griffiths and Loretta Han Yi Griffiths

Chapter 7

#10.00 Motion for Relief from Stay (Action in NonBankruptcy Forum).

**JOHN SHAW, MIDORI SHAW, AND SHIPSHAPE COLLECTIVE OF
FITCHBURG, LLC
Vs.
DEBTORS**

Docket 39

Tentative Ruling:

Tentative for 7/27/21:
Grant for purposes of quantifying and possibly characterizing claim. No levy against estate assets absent further order.

Party Information

Debtor(s):

William Scott Griffiths

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Loretta Han Yi Griffiths

Represented By
Brian J Soo-Hoo

Movant(s):

Courtesy NEF

Represented By
Valerie Smith
Joshua J Herndon
David Gurnick

Courtesy NEF

Represented By
Eric A Mitnick

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 27, 2021

Hearing Room 5B

10:30 AM

CONT...

William Scott Griffiths and Loretta Han Yi Griffiths

Chapter 7

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

Tuesday, July 27, 2021

Hearing Room 5B

11:00 AM

8:17-14812 Gerardo Tapia and Maria E Tapia

Chapter 7

#11.00 Motion To Avoid Judicial Lien with Cavalry SPV I, LLC

Docket 57

Tentative Ruling:

Tentative for 7/27/21:

The court will hear argument whether the target liens truly impair the homestead. There is apparent equity net of liens and the homestead (if applied toward the total value); but the calculation changes if the arithmetic is taken only as to half the value, one supposes. But no authority is cited. No tentative.

Party Information

Debtor(s):

Gerardo Tapia

Represented By
Alaa A Ibrahim
Michael D Franco

Joint Debtor(s):

Maria E Tapia

Represented By
Alaa A Ibrahim
Michael D Franco

Movant(s):

Gerardo Tapia

Represented By
Alaa A Ibrahim
Michael D Franco

Maria E Tapia

Represented By
Alaa A Ibrahim
Michael D Franco

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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

Tuesday, July 27, 2021

Hearing Room 5B

11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#12.00 Motion To Vacate Or, In The Alternative, Modify Order Granting Trustee's Motion To Approve Settlement And Subordination Agreement With Remares Global, LLC And Global Approach, LLC [Docket No. 227] Pursuant To Federal Rule Of Bankruptcy Procedure 9024 And Bankruptcy Code 105(a)

Docket 344

***** VACATED *** REASON: OFF CALENDAR - VIBE MICRO, INC'S NOTICE OF WITHDRAWAL, WITHOUT PREJUDICE, OF MOTION TO VACATE OR, IN THE ALTERNATIVE, MODIFY ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SETTLEMENT AND SUBORDINATION AGREEMENT WITH REMARES GLOBAL, LLC AND GLOBAL APPROACH, LLC [DOCKET NO. 227] FILED 7-20-21, DOCKET NO. 369**

Tentative Ruling:

- NONE LISTED -

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**

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 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/1619602330>

ZoomGov meeting number: 161 960 2330

Password: 128323

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

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: <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**

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:21-10256 BioXXel, LLC

Chapter 11

**#1.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
LLC
(cont'd from 3-10-21)**

Docket 1

Tentative Ruling:

Tentative for 7/28/21:
See #2

Tentative for 3/10/21:
Plan and disclosure deadline July 1, 2021. Claims bar sixty days from
dispatch of notice.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:21-10256 BioXXel, LLC

Chapter 11

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

Docket 87

Tentative Ruling:

Tentative for 7/28/21:
Approve.

Party Information

Debtor(s):

BioXXel, LLC

Represented By
David Wood
Laila Masud
Matthew Grimshaw

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:21-11152 Ultimate Towing & Recovery, LLC

Chapter 11

**#3.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition
Individual. LLC
(cont'd from 6-23-21)**

Docket 1

Tentative Ruling:

Tentative for 7/28/21:
See #4.

Tentative for 6/23/21:
Will there be a request for order to combine disclosure with the plan and to
specify that 1125 does not apply? See §§ 1181(b) and 1187(c). Are we
ready to set confirmation hearing?

Party Information

Debtor(s):

Ultimate Towing & Recovery, LLC

Represented By
Michael R Totaro

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:21-11152 Ultimate Towing & Recovery, LLC

Chapter 11

#4.00 Confirmation Of First Amended Chapter 11 Small Business Plan

Docket 32

Tentative Ruling:

Tentative for 7/28/21:

Confirm. Confirmation order shall reflect the additional points raised in trustee's response.

Party Information

Debtor(s):

Ultimate Towing & Recovery, LLC

Represented By
Michael R Totaro

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**

Wednesday, July 28, 2021

Hearing Room

5B

10:00 AM

8:18-10486 Ron S Arad

Chapter 11

#5.00 Application for Compensation For Period: 2/14/2018 to 7/6/2021:

WILLIAM H BROWNSTEIN, DEBTOR'S ATTORNEY

FEE: \$716310.00

EXPENSES: \$16571.95

Docket 446

***** VACATED *** REASON: OFF CALENAR - NOTICE OF
WITHDRAWAL OF HEARING ON APPLICATION FOR APPROVAL OF
FINAL FEES AND EXPENSES OF WILLIAM H. BROWNSTEIN &
ASSOCIATES, PROFESSIONAL CORPORATION FILED 7-21-21
DKT#462**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#6.00 Third And Final Fee Application For Compensation For Period: 7/7/2020 to 6/16/2021:

MICHAEL JAY BERGER, DEBTOR'S ATTORNEY:

FEE:	\$59,630.00
EXPENSES:	\$1,489.18

Docket 248

Tentative Ruling:

Tentative for 7/28/21:
Allow as prayed.

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, July 28, 2021

Hearing Room 5B

10:00 AM

8:19-14893 Talk Venture Group, Inc.

Chapter 11

#7.00 Third and Final Fee Application For Period: 2/28/2020 to 9/29/2020:

JENNIFER M. LIU, ACCOUNTANT FOR DEBTOR:

FEE: \$27,525.00

Docket 254

Tentative Ruling:

Tentative for 7/28/21:
Allow as prayed.

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, July 28, 2021

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#8.00 Third and Final Fee Application For Period: 1/1/2021 to 6/14/2021:

MICHAEL JAY BERGER, DEBTOR'S ATTORNEY

FEE:	\$14,042.50
EXPENSES:	\$856.35

Docket 141

Tentative Ruling:

Tentative for 7/28/21:
Allow as prayed.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:20-10168 Paul Se Won Kim

Chapter 11

#9.00 Final Application for Compensation for Period: 1/1/2021 to 5/31/2021:

JENNIFER M. LIU, ACCOUNTANT

FEE: \$1,250.00

EXPENSES: \$0.00

Docket 144

Tentative Ruling:

Tentative for 7/28/21:
Allow as prayed.

Party Information

Debtor(s):

Paul Se Won Kim

Represented By
Michael Jay Berger

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#10.00 Debtor's Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization Dated November 2, 2020
(cont'd from 4-21-21 per order approving stip. to extend dates set by scheduling order after hrg on adequacy of discl stmt and cont hrg entered 3-26-21)

Docket 106

Tentative Ruling:

Tentative for 7/28/21:
See #11.

Tentative for 1/27/21:

Debtor's reply indicates an intent to amend the DS consistent with several of the points made in the objections, and particularly, the U.S. Trustee and IRS objections. However, Debtor asks the court to approve the DS with the proposed amendments before actually reviewing them, which is premature given the size and seriousness of the alleged discrepancies. The court requires a hearing on the amended DS to ensure that the proposed amendments cure the defects and shortcomings acknowledged by Debtor and enable the interested parties to conduct their own review. On the bright side, it does not seem that the necessary amendments to the DS will be especially cumbersome, and thus, should not require a considerable continuance period. Debtor appears correct that many of the SIF issues raised are confirmation issues, not disclosure adequacy issues. For example, SIF asserts that the DS does not adequately describe its remedies should the Debtor default under the plan. Debtor persuasively argues that what SIF is really asserting is that the plan is not fair and equitable to them, which is a confirmation issue under §1129(b)(2)(A). In any case, Debtor asserts that SIF will retain the lien securing its claim and receive deferred cash payments having a present value of at least the value of its Allowed Claim and equal to the value of its collateral as of the Effective Date. SIF also raises concerns that the DS does not offer a way for Debtor to pay the balloon payment due in

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

CONT...

Rafik Youssef Kamell

Chapter 11

fifteen years. Again, Debtor points out that such income projections are included in the current DS and asserts that this objection is appropriately understood as a confirmation issue because it raises questions of feasibility, not adequate disclosure. While this is true in the abstract, if a confirmation issue is too large or profound, it may also go to the question of whether the additional resources for amendment of a disclosure on a patently unconfirmable plan are prudent. In this category is the question of how debtor intends to amortize a priority claim of the size claimed by IRS in the few remaining months available under the maximum amortization period permitted under §1129(a)(9). The court notes that much of the claim is comprised of estimated taxes, but this threshold issue should be addressed.

Although SIF, an over-secured creditor, points to numerous alleged deficiencies in the DS, none of them appear to be obviously fatal. Debtor will be amending the DS and would be well-advised to take some of SIF's objections seriously by including more direct answers in the amended DS, particularly around the issue of feasibility. Debtor may be correct that many of SIF's objections are confirmation issues, but what harm is there in addressing at least some of them now, particularly on some of the more serious feasibility questions?

As Debtor will be amending the DS as noted above to address both the U.S. Trustee's and IRS's objections, the hearing will be continued to allow Debtor time to make such amendments as appear necessary and allow all interested parties time to review the amended DS. Debtor is advised to address the feasibility questions raised by SIF (and as to the IRS priority claim) as confirmation of the plan will almost certainly be challenged on that ground.

Also, the Declaration of IRS agent Johnson is disturbing. The Debtor cannot expect to obtain an approval of disclosure, or even to remain in Chapter 11, without displaying suitable cooperation with the IRS whose very large claim represents a major impediment. Moreover, this is no longer a young case and non-cooperation at this critical juncture can call good faith in general into question.

Continue. Appearance: required

Party Information

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

CONT... Rafik Youssef Kamell

Chapter 11

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, July 28, 2021

Hearing Room

5B

10:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#11.00 Motion For Order Extending Dates and Deadlines In Scheduling Order Regarding Debtors Filing Of Amended Disclosure Statement and Hearing on Adequacy Of Debtors Amended Disclosure Statement

Docket 161

Tentative Ruling:

Tentative for 7/28/21:
Grant.

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, July 28, 2021

Hearing Room 5B

10:00 AM

8:16-13915 CYU Lithographics Inc

Chapter 11

**#12.00 Order Setting Allegations Of Post-Petition Default
(cont'd from 5-26-21)**

Docket 0

Tentative Ruling:

Tentative for 7/28/21:

Stipulated order granted. What is the status of creditor claims other than RM Machinery?

Tentative for 5/26/21:

Status? Would a mediation assist?

Party Information

Debtor(s):

CYU Lithographics Inc

Represented By
John H Bauer

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

**#13.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 6-23-21)**

Docket 1

Tentative Ruling:

Tentative for 7/28/21:
See #s 14-16.

Tentative for 6/23/21:
Continue to adequacy of disclosure or confirmation hearing.

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

CONT... Bridgemark Corporation
Same as #8. Appearance: required

Chapter 11

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, July 28, 2021

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#14.00 Joint Motion For Order Confirming Joint Chapter 11 Plan of Liquidation
Proposed by Bridgemark Corporation and Placentia Development Company,
LLC, Dated as of June 30, 2021

Docket 501

Tentative Ruling:

Tentative for 7/28/21:
Confirm. See #s 15 and 16 to be reflected in order.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Matthew J Pero

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

Wednesday, July 28, 2021

Hearing Room

5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#15.00 Joint First Omnibus Objection Of Bridgemark Corporation And Placentia Development Company, LLC To Satisfied Claims:

Claim # 1-1

County of Orange

Claim # 3-2

CIT Bank NA

**Claim # 5-1
(assignee of Ford Motor Credit Co.)**

Watsonville Ford Lincoln

Claim # 14-1

BPS Supplier Group

Docket 477

Tentative Ruling:

Tentative for 7/28/21:

Sustained although the court is unclear why an order is required as it seems all were satisfied in one way or another. Some clarification on that point is requested.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Matthew J Pero

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#16.00 Joint Objection of Bridgemark Corporation And Placentia Development Company, LLC Claims:

Claim No. 17-1	Mary Jean Boyd Todd
Claim No. 19-1	Sheri C. Parks Trust
Claim No. 20-1	Survivors Trust of Politiski Trust (aka Plitiski Survivors Trust)
Claim No. 21-1	Ridley J. Politiski
Claim No. 22-1	Michael P. Politiski
Claim No. 23-1	Marianne P. Covington
Claim No. 24-1 Family Trust	Richard And Karen Clements
Claim No. 26-1 Revocable Trust	The Catherine S. Chandler
Claim No. 27-1	D. McFarland Chandler Jr.
Claim No. 28-1	D. McFarland Chandler
Claim No. 29-1	Ethel Severson Living Trust
Claim No. 31-1	Robert Hall
Claim No. 32-1	John Kraemer
Claim No. 33-1	Christine Vetter Pate

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

Wednesday, July 28, 2021

Hearing Room 5B

10:00 AM

CONT...

**Bridgemark Corporation
Claim No. 34-1**

Chapter 11

Susan Elizabeth Vetter

Claim No. 35-1

Laughlin E. Waters

Docket 478

Tentative Ruling:

Tentative for 7/28/21:

Sustain. The arguments of Mr. Kraemer, and by extension any others similarly situated, seem beside the point (or at least unclear) based on the court's understanding of events. The leases have all been assumed by prior order of this court and assigned to a buyer. No abridgment was made of rights thereunder. If rights exist for access to mineral rights holders and/or payment for extraction under those leases, and/or resistance to capping of wells, they remain so in the hands of the transferee. But the court is not inclined to get into advisory opinions on what might be triggered by future events and those disputes, if any, will be the domain of another court. The objectors allege that all monetary claims that might be characterized as administrative have already been paid, and thus claims for those sums disallowed. The court sees nothing to dispute that allegation.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Matthew J Pero

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

Wednesday, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-10697 Beth E. Mackey

Chapter 13

#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-16-21)

Docket 6

Tentative Ruling:

Tentative for 7/28/21:
Confirm if issues identified by trustee are met.

Tentative for 6/16/21:
See Trustee's comments. Plan needs to deal with arrearages on B of A in proper class and for secured claim #13. No tentative.

Tentative for 5/19/21:
Mellon bank objection? Trustee's point about admin claims?

Party Information

Debtor(s):

Beth E. Mackey

Represented By
Thomas J Polis

Movant(s):

Beth E. Mackey

Represented By
Thomas J Polis
Thomas J Polis

Trustee(s):

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 28, 2021

Hearing Room 5B

1:30 PM

8:21-10755 Jennifer Wu

Chapter 13

**#2.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-16-21)**

Docket 15

Tentative Ruling:

Tentative for 7/28/21:
Trustee's comments must be addressed.

Tentative for 6/16/21:
How do we deal with short notice? Trustee's request for missing documents
and evidence of employment must be met. Continue?

Tentative for 5/19/21:
How will debtor address the serious issues and missing documents raised by
the trustee?

Party Information

Debtor(s):

Jennifer Wu

Represented By
Christopher C Barsness

Trustee(s):

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 28, 2021

Hearing Room 5B

1:30 PM

8:21-10943 Marina Leonidovna Weahunt

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-16-21)**

Docket 0

Tentative Ruling:

Tentative for 6/16/21:

Continue to July 28, 2021 for claims bar and in meantime the plan should be reformed to deal with BMW's point about full valued of collateral as a § 1325(a)(5) 'hanging paragraph' issue.

Party Information

Debtor(s):

Marina Leonidovna Weahunt

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, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-10961 Gerardo Esparza and Brenda R Esparza

Chapter 13

#4.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-16-21)

Docket 8

Tentative Ruling:

Party Information

Debtor(s):

Gerardo Esparza

Represented By
Gerald S Kim

Joint Debtor(s):

Brenda R Esparza

Represented By
Gerald S Kim

Movant(s):

Gerardo Esparza

Represented By
Gerald S Kim
Gerald S Kim

Brenda R Esparza

Represented By
Gerald S Kim
Gerald S Kim
Gerald S Kim
Gerald S Kim
Gerald S Kim

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11011 Fernan Edgardo Lozano

Chapter 13

**#5.00 Confirmation Of Chapter 13 Plan
(cont'd from 6-16-21)**

Docket 2

Tentative Ruling:

Tentative for 7/28/21:
Trustee's comments must be addressed.

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, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11054 Kenneth D Leslie

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth D Leslie

Represented By
Andy C Warshaw

Movant(s):

Kenneth D Leslie

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, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11069 Cynthia Lynn Yee

Chapter 13

**#7.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia Lynn Yee

Represented By
Rex Tran

Movant(s):

Cynthia Lynn Yee

Represented By
Rex Tran
Rex Tran
Rex Tran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11076 Leticia Nedeau

Chapter 13

**#8.00 Confirmation Of Amended Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 18

Tentative Ruling:

Tentative for 7/28/21:
Trustee's objections must be addressed.

Party Information

Debtor(s):

Leticia Nedeau

Represented By
Trang Phuong Nguyen

Movant(s):

Leticia Nedeau

Represented By
Trang Phuong 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, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11094 Francesca Silva Morales

Chapter 13

**#9.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 10

Tentative Ruling:

Tentative for 7/28/21:

Plan must deal with Toyota claim and status of payments/adjustment(?) after that claim is paid.

Party Information

Debtor(s):

Francesca Silva Morales

Represented By
Marlon B Baldomero

Trustee(s):

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 28, 2021

Hearing Room 5B

1:30 PM

8:21-11103 Kristen Marie Duggins

Chapter 13

**#10.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 2

Tentative Ruling:

Tentative for 7/28/21:
Cab West claim resolved? If so, confirm.

Party Information

Debtor(s):

Kristen Marie Duggins

Represented By
Anthony B Vigil

Movant(s):

Kristen Marie Duggins

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, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11112 Robert W Castillo and Cynthia L Castillo

Chapter 13

**#11.00 Confirmation Of The Amended Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 14

Tentative Ruling:

Tentative for 7/28/21:
Confirm on terms suggested by trustee.

Party Information

Debtor(s):

Robert W Castillo

Represented By
Julie J Villalobos

Joint Debtor(s):

Cynthia L Castillo

Represented By
Julie J Villalobos

Movant(s):

Robert W Castillo

Represented By
Julie J Villalobos

Cynthia L Castillo

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11140 Enrique Martinez

Chapter 13

**#12.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 2

Tentative Ruling:

Tentative for 7/28/21:
Trustee's and Ajax's points must be addressed.

Party Information

Debtor(s):

Enrique Martinez

Represented By
Richard L. Sturdevant

Movant(s):

Enrique Martinez

Represented By
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11180 Dominic Caruso

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL ARISING FROM DEBTOR'S
REQUEST FOR VOLUNTARY DISMISSAL OF CH 13 WITH
RESTRICTION ENTERED 6-15-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dominic Caruso

Represented By
Charles J Brash

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5A

1:30 PM

8:21-11210 Bao Dang Le

Chapter 13

**#14.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 0

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
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Wednesday, July 28, 2021

Hearing Room 5B

1:30 PM

8:21-11233 Michael Roberts Yates

Chapter 13

**#15.00 Confirmation Of Chapter 13 Plan
(re-scheduled from 7-21-21 per court own mtn)**

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Roberts Yates

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 28, 2021

Hearing Room 5B

1:30 PM

8:21-11248 Michael Dennis

Chapter 13

#16.00 Confirmation Of Chapter 13 Plan

Docket 15

***** VACATED *** REASON: OFF CALENDAR - DEBTOR'S REQUEST
FOR VOLUNTARY DISMISSAL OF CHAPTER 13 CASE & ORDER AND
NOTICE OF DISMISSAL ENTERED 7-06-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Dennis

Represented By
Joshua L Sternberg

Movant(s):

Michael Dennis

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 28, 2021

Hearing Room 5B

3:00 PM

8:16-12588 Charlene Anne Voge

Chapter 13

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

Docket 64

***** VACATED *** REASON: Off Calendar - Notice Of Withdrawal Of
Trustee's Motion For Order Dismissing Chapter 13 Filed 6-30-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charlene Anne Voge

Represented By
Sunita N Sood
Seema N Sood

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#18.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision
(cont'd from 5-19-21)
(re-scheduled from 7-21-21 per court own mtn)

Docket 59

Tentative Ruling:

Tentative for 7/28/21:
See #19.

Tentative for 5/19/21:
See #17.1

Tentative for 4/14/21:
Is this moot depending on result of modification motion filed March 9?

Tentative for 3/17/21:
Grant unless feasibility issue cured or modification motion on file.

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

CONT... David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#19.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments
(cont from 5/19/21)
(re-scheduled from 7-21-21 per court own mtn)

Docket 68

Tentative Ruling:

Tentative for 7/28/21:

The objections of Ascentium and the trustee are both well taken. Of paramount concern is the best interest of creditors' test. It appears that there may be equity sufficient to pay creditors in full from the residence, but no argument is given why a plan allowing a discount should be confirmed notwithstanding. Debtor asserts without any authority cited that the best interest test is timed as of the petition date, not the modification date. A dubious theory in the court's view. Of similar concern is the proposed absence of tax refunds, made even more problematic given the missing return. "TBD" for creditor recovery is not adequate under these circumstances.

Deny

Tentative for 5/19/21:

Several serious issues are raised as mentioned by both the Trustee and Ascentium. Why should the debtors be excused from turning over tax refunds when they do not propose 100% payment?

Party Information

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

CONT... David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

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 154

Tentative Ruling:

Tentative for 7/28/21:
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, July 28, 2021

Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

**#21.00 Trustee's Motion to Dismiss Case failure to make plan payments
(cont'd from 6-16-21)**

Docket 52

Tentative Ruling:

Tentative for 7/28/21:
See #22.

Tentative for 6/16/21:
See #14.

Tentative for 5/19/21:
See #20

Tentative for 4/14/21:
See #18.

Tentative for 3/17/21:
Grant unless current or modification motion on file.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

CONT... Wendy K. McElfish

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 28, 2021

Hearing Room 5B

3:00 PM

8:17-14526 Wendy K. McElfish

Chapter 13

#22.00 Motion to Modify Plan And/Or Suspend Plan Payments
(cont'd from 6-16-21)

Docket 56

Tentative Ruling:

Tentative for 7/28/21:
Trustee's points must be addressed .

Tentative for 6/16/21:
Debtor has not responded to Trustee's comments on the Modification. The unauthorized purchase of a vehicle with family assistance may not itself be fatal, but at least an explanation should be given. Proof of current income is a more substantive issue and since the elements of confirmation, including feasibility, must be met anew with modification, response is required. No tentative.

Tentative for 5/19/21:
Debtors must address Trustee's points.

Tentative for 4/14/21:
In view of trustee's concerns, the court needs to know whether the effort to modify will be prosecuted in which case responses to trustee's points are required.

Party Information

Debtor(s):

Wendy K. McElfish

Represented By
Joseph A Weber

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

CONT...

Wendy K. McElfish

Fritz J Firman

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#23.00 Trustee's Motion to Dismiss Case Failure To Make Plan Payments.
(cont'd from 5-19-21)
(re-scheduled from 7-21-21 per court own mtn)

Docket 69

Tentative Ruling:

Tentative for 7/28/21:
#24.

Tentative for 5/19/21:
Grant.

Tentative for 3/17/21:
Debtor filed a modification motion November 3, 2020 upon which the Trustee filed comments recommending against. Debtor has taken no other action. Should that be set for hearing? Continue to coincide with any hearing regarding modification. If none is set, grant dismissal motion on continued hearing April 14.

Tentative for 1/20/21:
Grant unless current. Appearance: required

Tentative for 12/16/20:
Continue to coincide with modification motion.

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

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

CONT... Wendie Lorraine Brigham

Chapter 13

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, July 28, 2021

Hearing Room 5B

3:00 PM

8:19-12270 Wendie Lorraine Brigham

Chapter 13

#24.00 Motion Under Local Bankruptcy Rule 3015-1 (n) and (w) To Modify Plan Or Suspend Plan Payments
(cont from 5/19/21)
(re-scheduled from 7-21-21 per court own mtn)

Docket 76

Tentative Ruling:

Tentative for 7/28/21:
Approve on terms recommended by trustee.

Tentative for 5/19/21:
In view of debtor's failure to support her motion or respond to comments despite continuances (as described by Trustee) deny.

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, July 28, 2021

Hearing Room 5B

3:00 PM

8:19-14344 Maria De Lourdes Chavez

Chapter 13

**#25.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments.
(cont'd from 6-16-21)**

Docket 43

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
VOLUNTARY DISMISSAL OF MOTION FILED 7-20-21**

Tentative Ruling:

Tentative for 6/16/21:
Continue to coincide with modification hearing July 28, 2021.

Tentative for 5/19/21:
Grant unless current or other curative motion on file.

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
Courtroom 5B Calendar**

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

8:19-14344 Maria De Lourdes Chavez

Chapter 13

#26.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 48

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF MOTION UNDER LBR 3015-19(n) And To Modify
Plan Or Suspend Plan Payments Filed 6-11-21**

Tentative Ruling:

- NONE LISTED -

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
Courtroom 5B Calendar**

Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

8:19-12140 Rhonda Lynn Brown-Palacios

Chapter 13

#27.00 Application Of Attorney For Debtor For Additional Fees And Related Expenses In A Pending Chapter 13 Case Subject To A Rights And Responsibilities Agreement
Period: 6/1/2019 to 6/18/2021

NICHOLAS J. COCHRAN, DEBTOR'S ATTORNEY

FEE:	\$3050.00
EXPENSES:	\$0.00

Docket 43

Tentative Ruling:

Tentative for 7/28/21:
Approve but clarify, are these \$3050 in addition to the \$5k RARA, or in lieu of the balance that would have been earned? The two sums appear almost identical under the latter analysis.

Party Information

Debtor(s):

Rhonda Lynn Brown-Palacios

Represented By
Nicholas J Cochran

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

8:21-11384 Dianne Dobson-Sojka

Chapter 13

#28.00 Order To Show Cause For Failure To Pay Third Installment In The Amount Of \$80.00

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED
FOR FAILURE TO FILE SCHEDULES ENTERED 7-14-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dianne Dobson-Sojka Pro Se

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, July 28, 2021

Hearing Room 5B

3:00 PM

8:21-11384 Dianne Dobson-Sojka

Chapter 13

#29.00 Order To Show Cause For Failure To Pay Second Installment In The Amount Of \$80.00 Due By 6/7/2021

Docket 1

*** VACATED *** REASON: OFF CALENDAR - SECOND
INSTALLMENT FEE PAID IN THE AMOUNT OF \$80.00 ON 6-10-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dianne Dobson-Sojka

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, July 29, 2021

Hearing Room

5B

10:00 AM

8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1619293678>

ZoomGov meeting number: 161 929 3678

Password: 958889

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <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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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, July 29, 2021

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 (cont'd from 5-13-21 per another summons issued on 5-11-21) (rescheduled from 5-6-21 per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER REQUEST THAT THE CLERK ISSUE ANOTHER SUMMONS AND
NOTICE OF STATUS CONFERENCE ENTERED 7-27-21**

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?

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 29, 2021

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
Kathleen J McCarthy

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

CONT...

Zia Shlaimoun

Michael Jason Lee
Sunjina Kaur Anand Ahuja

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 11

Adv#: 8:19-01066 BP Fisher Law Group, LLP v. SELECT PORTFOLIO SERVICING, INC.

**#2.00 STATUS CONFERENCE RE: Complaint For (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(cont'd from 4-08-21 per order approving stip to cont. status conf. entered 4-07-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-30-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 7-14-21**

Tentative Ruling:

Tentative for 4/8/21:
Status? This matter has been continued several times.

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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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

8:18-11154 i.i. Fuels, Inc.

Chapter 7

Adv#: 8:21-01002 Marshack v. Swift Financial Corporation et al

#3.00 STATUS CONFERENCE RE: Complaint For: 1) Usury; 2) Unconscionability; 3) Negligence Per Se--Violation of California Finance Lending Law; 4) Violation of California Business and Professions Code Section 17200; 5) Unjust Enrichment/Disgorgement; 6) Fraud; 7) Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 USC Section 544(b) and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05; 8) Determination of Liens Pursuant to 11 USC Sections 502, 506 and 551; and 9) Injunction and Declaratory Relief
(cont'd from 5-27-21 per order approving stip. to cont. status conf. entered 5-14-21)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
PLAINTIFF'S REQUEST FOR DISMISSAL OF ADVERSARY
COMPLAINT FILED 7-07-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

i.i. Fuels, Inc.

Represented By
Leonard M Shulman

Defendant(s):

Swift Financial Corporation

Pro Se

Paypal, Inc.

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Robert P Goe

Trustee(s):

Richard A Marshack (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

CONT... i.i. Fuels, Inc.

Rafael R Garcia-Salgado

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

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

**#4.00 PRE-TRIAL CONFERENCE RE: Amended Adversary Complaint of Nondischargeability and Exception from Discharge of Debts for Case KC069896 Samec vs. Griffithe et.al.
(set from s/c hrg held on 6-25-20)
(cont'd from 7-22-21 per court's own mtn)**

Docket 47

Tentative Ruling:

Tentative for 7/29/21:
See #6.

Tentative for 6/25/20:
No status conference report. Was this to be continued ? See #4

Tentative for 4/29/20:
See #17.

Tentative for 3/12/20:
See #7.

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

**United States Bankruptcy Court
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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

CONT... Guy S. Griffithe

Chapter 7

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
Central District of California
Santa Ana
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Thursday, July 29, 2021

Hearing Room 5B

10:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

#5.00 PRE-TRIAL 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) (set from s/c hrg held on 7-30-20) (cont'd from 4-22-21 per order on stip. to extend discovery and pre-trial deadlines entered 4-20-21)

Docket 1

Tentative Ruling:

Tentative for 7/29/21:

Has this been resolved via the settlement approved by order entered March 29?

Tentative for 7/30/20:

Discovery cutoff December 31, 2020. Last date to file pretrial motions January 22, 2021. Pretrial conference February 11, 2021.

Tentative for 3/26/20:

Status conference continued to June 25, 2020 at 10:00AM for completion of arbitration.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer

Defendant(s):

Deborah Jean Hughes

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

CONT... Deborah Jean Hughes

Chapter 7

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 29, 2021

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

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

#6.00 Plaintiff's Motion To Dismiss, Debtors Bankruptcy Or, In The Alternative, Stay Adversary Proceeding

Docket 77

Tentative Ruling:

Tentative for 7/29/21:

This is Plaintiff, Joseph Samec's ("Plaintiff") motion to dismiss debtor, Guy Griffithe's ("Debtor") bankruptcy or, in the alternative, to stay this adversary proceeding. Plaintiff is proceeding *pro se*, and thus, the motion to dismiss Debtor's bankruptcy case is somewhat scattered and unfocused. It chronicles Plaintiff's alleged unfortunate dealings with Debtor and ultimately concludes that Debtor should have his case dismissed, have any discharge denied, or have certain debts Plaintiff argues were incurred through fraud or some other malfeasance found non dischargeable pursuant to various subsections of 11 U.S.C. §727 and 11 U.S.C. §523(a).

Debtor argues that pursuant to the scheduling order of September 3, 2020, the last day to file pre-trial motions was June 21, 2021. This motion was filed on June 22, 2021, rendering it untimely, at least as to the adversary proceeding. The motion could be denied on that procedural basis alone. The motion should also be denied on procedural grounds as it apparently seeks a type of summary judgment as to Debtor's culpability pursuant to the allegations in Plaintiff's complaint. Plaintiff misunderstands. Unproven and disputed allegations cannot be the basis for dismissing a Debtor's bankruptcy case, as Plaintiff would apparently have this court do. Thus, the motion should be denied on that basis as well.

As to the portion requesting a temporary stay or abstention, Debtor asserts that this court already heard and denied Plaintiff's prior motion for a temporary stay. However, the court did so largely because, at that time (June of 2020), there were other related cases going on in other courts, but this case was not very far along. More than a year has passed since then. Still, it

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

11:00 AM

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

Chapter 7

is difficult to discern from the motion where the other cases stand at this point. There has been no new status report filed.

There are 5 factors for a court to weigh when determining whether a stay of proceedings is warranted: "(1) the interest of the plaintiff in proceeding expeditiously with the civil action as balanced against the prejudice to the plaintiffs if delay; (2) the burden on the defendants; (3) the convenience to the courts; (4) the interest of persons not parties to the civil litigation; and (5) the public interest." *Southwest Marine, Inc. v. Triple a Machine Shop, Inc.*, 720 F. Supp. 805, 809 (N.D. Cal. 1989).

Here, Debtor points out that the analysis in Plaintiff's motion regarding the of above factors is essentially a copy/paste job of the analysis taken from a similar motion in a related adversary proceeding. See *Steven Bagot v. Guy S. Griffithe*, Case No. 8:19-bk-12480-TA, Adv. No. 8:19-ap-01201-TA (Dkt. # 29). It does not assist the court in determining whether abstention is appropriate at this juncture. Therefore, as it is Plaintiff's burden to demonstrate that he is entitled to the relief sought, that burden is not carried, and the motion will be denied absent a better explanation than found in the motion.

Deny.

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones
Laurie Schiff

Defendant(s):

Guy Griffithe Et.Al

Represented By
Laurie Schiff
Ralph C Shelton II

Plaintiff(s):

Joseph Samec

Pro Se

**United States Bankruptcy Court
Central District of California
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11:00 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
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Thursday, July 29, 2021

Hearing Room 5B

2:00 PM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 City National Bank, a national banking association v. Fu et al

#8.00 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 5-13-21)

Docket 1

Tentative Ruling:

Tentative for 7/29/21:
See #10..

Tentative for 5/13/21:
Continue to coincide with hearing on summary judgment July 29, 2021.

Appearance: optional

Tentative for 1/7/21:
See #7

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

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Hearing Room 5B

2:00 PM

CONT... Cheri Fu

Chapter 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.

Tentative for 3/7/19:
It would seem that the areas still subject to reasonable dispute all go to whether the Fus committed fraud between the inception of the credit in May of 2008 and the onset of the admitted fraud commencing October of 2008. Another issue would be the usual predicates to fraud such as reasonable reliance by bank personnel or auditors on statements made and materials given during that period. On damages, it might also.

While the court can identify the window of time that is relevant, it has no inclination to limit the means of discovery which can include all of the normal tools: depositions, subpoenas, including to third parties, and interrogatories and/or requests for admission.

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Hearing Room 5B

2:00 PM

CONT... Cheri Fu

Chapter 7

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

Cheri Fu

Represented By
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By
Mark Anchor Albert

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

City National Bank, a national

Represented By
Evan C Borges
Kerri A Lyman
Jeffrey M. Reisner

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson

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

Thursday, July 29, 2021

Hearing Room 5B

2:00 PM

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 5-13-21)

Docket 0

Tentative Ruling:

Tentative for 7/29/21:
See #10.

Tentative for 5/13/21:
Continue to coincide with summary judgment hearing on July 29 @ 2:00 p.m..

Tentative for 1/7/21:
See #7

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?

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CONT... Cheri Fu

Chapter 7

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.

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

Chapter 7

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

BANK OF AMERICA, N.A.

Represented By
William S Brody

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson
James Andrew Hinds Jr

**United States Bankruptcy Court
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8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

#10.00 Plaintiff's Motion For Partial Summary Judgment On Complaint Against Defendants Cheri Fu and Thomas Fu

Docket 339

Tentative Ruling:

Tentative for 7/29/21:

This is Plaintiff, Bank of America N.A.'s ("Plaintiff") motion for partial summary judgment against debtors, Cheri and Thomas Fu ("Debtors"). Plaintiff is successor to certain interests of City National Bank ("CNB"). As noted in the motion to be relieved as Debtor's counsel, Debtors did not plan to oppose this motion, and have not done so.

Summary Judgment Standards

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings. FRCP 56(c) provides that judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FRCP 56(e) provides that supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith. FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just.

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those

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matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex Corporation v. Catrett*, 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

Summary of Undisputed Facts

As summarized in the unopposed motion, the critical and undisputed facts are as follows:

Cheri and Thomas Fu have entered guilty pleas for felony criminal bank fraud under 18 U.S.C. § 1344. The elements of felony bank fraud overlap with, if not exceed (due to the higher burden of proof in criminal cases), the elements of fraud that must be proven under 11 U.S.C. §§ 523(a)(2)(A) or 523(a)(2)(B). In their guilty pleas, the Fus admit to participating in an ongoing criminal fraudulent scheme, perpetrated against a consortium of banks, including CNB, in 2008 and 2009. The Fus admit that during this time, they intentionally and repeatedly provided false and wildly exaggerated sales and accounts receivable numbers for their company, Galleria USA, Inc. (“GUSA”), which had no correlation to reality, in order to induce banks, including CNB, to loan money. Among other things, the Fus represented that the bank loans would be and were fully secured by the assets of GUSA, most of which consisted of alleged accounts receivable generated by alleged underlying sales, which the Fus now admit were completely false and fabricated, by a magnitude of at least tenfold.

The criminal indictments of the Fus followed an extensive investigation

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and criminal referral to the Department of Justice by the chapter 11 trustee for the Fus' wholly owned company, GUSA. After compiling evidence for over a year, the chapter 11 trustee, Todd Nielson (the "Trustee") filed a detailed report (the "Trustee's Report") on March 13, 2011 (two days after the indictments were unsealed), which provided the evidentiary foundation for the indictments. Faced with overwhelming evidence of massive fraud, in November 2011, the Fus agreed to guilty pleas with the U.S. Government, in which the Fus admit that in 2008 and 2009 they engaged in a continuing fraudulent scheme designed to defraud a consortium of banks, including CNB, by intentionally and willfully inflating and exaggerating sales and accounts receivable numbers of GUSA by magnitudes of no less than ten times the actual numbers. The Fus admitted that in order to implement this fraudulent scheme they created two sets of books and, using the GUSA computer system, generated false invoices and false receivable reports, in order to deceive the banks as to the true level of receivables and sales at GUSA.

The Trustee's Report explains that he discovered the core of the Fus' fraud - false and exaggerated sales and account receivable numbers - by subpoenaing documents from GUSA's actual customers. The Trustee compared the actual invoices sent to and paid by the customers to the fabricated invoices that the Fus provided to the banks and represented to be the truth. As shown by the Trustee's Report and the criminal indictments, and as admitted in the Fus' guilty pleas, the difference between the actual and fabricated sales and account receivable figures is staggering. In 2008 and 2009, the Fus (i) represented to banks, including CNB, that they had a company, GUSA, with annual sales of close to \$400 Million and monthly accounts receivable of between \$92 and \$98 million, and (ii) borrowed based on these representations. The Fus subsequently admitted it was all a lie, and the true sales and accounts receivable of GUSA, at best, were a fraction of what was represented.

In the Complaint, CNB alleges that had it known the truth, as admitted in the Fus' guilty pleas, CNB would not have made any of the loans that are the subject of the Complaint, including the ABL Facility. In their Answer, the Fus admit this allegation. Thus, it is admitted and undisputed by the Fus that had CNB known the true facts as confessed and acknowledged by the Fus in

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their guilty pleas, CNB would not have made any of the three loans that are the subject of the Complaint—and, in particular, those relating to the ABL Facility after the Fus began to admittedly supply fraudulent information to the banks, including CNB, in order to obtain loan advances. With this admission, the Fus arguably have stipulated to the core fact necessary for a non-dischargeable fraud Judgment in favor of CNB on ABL Facility; namely, the Fus lied about and concealed material facts as admitted in their guilty pleas, and had CNB known the truth, CNB never would have made the loans in question; thus CNB's loans were induced by fraud.

11 U.S.C. §523(a)(2)(A) & (B)

This statute states:

"(a) 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—

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive[.]”

As noted in the undisputed facts recited above, the Fus have admitted in their guilty pleas that they perpetrated a fraudulent scheme against CNB (among other banks) that - in conjunction with the evidence in the CNB Declarations - satisfies the elements of both Section 523(a)(2)(A) and (a)(2)(B).

The Fus' admitted fraud included, without limitation:

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CONT... Cheri Fu

Chapter 7

- Affirmative material misstatements of fact in writing about the financial condition of an insider, GUSA (including false and fabricated receivable reports and false financial statements, which contained false sales and false account receivable numbers exaggerated by “tens of millions of dollars” and “ten or more times than the actual amount purchased”);

- Active concealment of the truth; and

- A fraudulent scheme in which the Fus’ caused the GUSA computer system to generate two sets of books, with the false set of records, including false financial reports, provided to the banks, including CNB, to obtain loans by fraud.

The facts that the Fus misrepresented to and concealed from CNB, in order to obtain the CNB Loans, were highly material to CNB’s decision to enter into each of the CNB Loans. UF ¶¶ 24, 37. CNB reasonably relied on the information that it received from the Fus, and suffered direct losses as a result of the Fus’ fraud. UF ¶¶ 31(c), 38. Finally, in their Answer, the Fus admit that CNB would not have made any of the CNB Loans had it known of the Fus’ fraudulent conduct.

Given the guilty pleas, the Fus have admitted that they knowingly and intentionally made false representations, provided CNB with materially false written statements regarding the financial condition of a debtor or an insider, and affirmatively concealed facts for the purpose of defrauding CNB.

Plaintiff Is Entitled To A Money Judgment

“A claim for breach of contract under California law consists of the following elements:

(1) the existence of a contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) damage resulting from the breach.” *Alcalde v. NAC Real Estate Investments and Assignments, Inc.*, 316 Fed.Appx. 661, 662 (9th Cir. 2009).

In this case, it is undisputed that the Fus have breached their obligations and Plaintiff, as CNB’s assignee, is entitled to summary judgment

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CONT...

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for breach of contract with respect to the ABL Facility. Specifically, there is no genuine dispute that:

- Pursuant to the ABL Facility, CNB, as Lender, performed all acts required of it, and funded and loaned its 15.38% share to and for the benefit of GUSA, in the principal amount of \$20,000,000. UF ¶ 7.

- The ABL Facility has been in default, and the principal amount loaned by CNB has been due and owing (plus interest, attorneys' fees and costs) since at least June 2009, when BofA as Agent declared the ABL Facility in default. UF ¶ 8.

- The Fus personally guaranteed the debt of GUSA under the ABL Facility, based on their Guaranty. UF ¶ 5.

Based on the foregoing, Plaintiff is entitled to a money judgment against the Fus for its 15.38% share of the ABL Facility in the amount of \$19,631,933.65 in principal, interest of \$6,282,488.79 through July 31, 2014, for a total amount owing of \$25,914,422.44. In addition, Plaintiff is entitled to per diem interest thereafter of \$3,408.32 through the date of entry of Judgment, and attorneys' fees and costs. UF ¶¶ 10, 11.

As was noted in the motion to be relieved as Debtor's counsel, Debtor's (now former) counsel noted that Debtor, Cheri Fu, is impecunious and, despite having knowledge of this motion, chose not to oppose it. Thus, the facts as recited above are deemed undisputed under the LBRs. This closes any gaps that might have existed when the Ninth Circuit first reviewed the matter. Plaintiff has demonstrated that it is entitled to the relief it requests based on the uncontroverted evidence submitted in support of the motion. Thus, the motion will be granted. Appearance is waived.

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen

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Chapter 7

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)
Lisa Nelson
James Andrew Hinds Jr

**United States Bankruptcy Court
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8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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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 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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Docket 0

Tentative Ruling:

- NONE LISTED -

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8:21-11291 Neven Nabil Mosaad

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**CORTE BELLA FEE OWNER LLC
Vs
DEBTOR**

Docket 8

Tentative Ruling:

Tentative for 8/3/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Neven Nabil Mosaad

Represented By
Robert P Taylor

Movant(s):

CORTE BELLA FEE OWNER LLC

Represented By
Scott Andrews

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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8:19-14912 Igor Shabanets

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**CREDITOR REMARES GLOBAL, LLC
Vs.
DEBTOR**

Docket 351

Tentative Ruling:

Tentative for 8/3/21:

As the court understands the motion, Remares is concerned that its claim of execution lien against monies levied in the hands of Merrill Lynch (later paid to the court's registry and then to the trustee by court order, where it now resides) might be on the threshold of expiration unless tolled under the provisions of §108(c), as interpreted in *In re Swintek*, 906 F. 3d 1100 (9th Cir. 2018). Remares wants either a declaratory relief order, or relief of stay in order to go the Superior Court for either issuance of a new writ, and presumably a new levy to create an execution lien, or more likely, some kind of extension order. A few points seem clear: 1. An advisory opinion is not appropriate, certainly not in a summary proceeding like relief of stay, and what is really a request for declaratory relief, should be by Rule 56 motion in an adversary proceeding under FRBP 7001(9); 2. Relief of stay for purposes of going to state court to either get the same declaratory relief, or some kind of extension order, or worse, re-levying the account is entirely inappropriate. Once a bankruptcy is filed we cannot have parties resorting to state court to extend or improve their existing liens lest the automatic stay become meaningless.

The appropriate place for the determination Remares seeks is in the pending adversary proceeding where priority of liens is already among the issues expressly raised, i.e., the claim objection adversary proceeding brought by Vibe Micro, # 21-01011-TA. If the concern is that the two-year period under state law of an execution lien is about to expire, creating an emergency, the court under §105 will issue a short extension order sufficient

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CONT... Igor Shabanets

Chapter 7

for a proper setup of the Rule 56 motion addressed only to the question of preserving against lapse in interim, not on the underlying question of whether a lien exists in the first place, which the court understands Vibe Micro disputes. Further, the proposed Rule 56 motion can be, and perhaps should be, focused on the narrow question of whether the doctrine expressed in *Swintek* regarding §108 controls here. The court does not need to get into the several ancillary questions Vibe Micro has also raised, but will do so if they are appropriately raised and supported as part of the same motion.

Deny, but issue a temporary order under §105 preserving status quo pending hearing in adversary proceeding.

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Movant(s):

Remares Global, LLC

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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10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**1ST UNITED SERVICES CREDIT UNION
Vs
DEBTORS**

Docket 234

Tentative Ruling:

Tentative for 8/3/21:
Grant. Appearance: optional

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

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo Cisneros
James C Bastian Jr

**United States Bankruptcy Court
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10:30 AM

8:21-11140 Enrique Martinez

Chapter 13

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

HONDA LEASE TRUST

Vs

DEBTOR; AND AMRANE COHEN, CHAPTER 13 TRUSTEE

Docket 25

Tentative Ruling:

Tentative for 8/3/21:

Grant. Appearance: optional

Party Information

Debtor(s):

Enrique Martinez

Represented By

Richard L. Sturdevant

Movant(s):

HONDA LEASE TRUST

Represented By

Vincent V Frounjian

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

8:20-10047 Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-13-21)**

**CTF ASSET MANAGEMENT, LLC
Vs.
DEBTORS**

Docket 82

Tentative Ruling:

Tentative for 8/3/21:
Same tentative as May 11, grant absent APO.

Tentative for 7/13/21:
Grant absent current status or APO.

Tentative for 6/8/21:
Same tentative, grant unless current or agree APO.

Tentative for 5/11/21:
Grant unless current or stipulated APO.

Party Information

Debtor(s):

Aureliano Gonzalez

Represented By
Elena Steers

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CONT... Aureliano Gonzalez and Juana Artega De Gonzalez

Chapter 13

Joint Debtor(s):

Juana Artega De Gonzalez

Represented By
Elena Steers

Movant(s):

CTF Asset Management, LLC, its

Represented By
Reilly D Wilkinson

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

8:21-11333 Frank Ivan Sanchez

Chapter 7

#6.00 United States Trustee's Motion To Dismiss Chapter 7 Case For Abuse With A Two-Year Bar To Refiling Pursuant To 11 U.S.C. §§ 707(B)(3)(A), 105(A), 109(G) And 349

Docket 9

Tentative Ruling:

Tentative for 8/3/21:
Grant with 2 year bar.

Appearance: optional

Party Information

Debtor(s):

Frank Ivan Sanchez

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 3, 2021

Hearing Room 5B

11:00 AM

8:13-19114 Everado Eddie Gonzalez

Chapter 7

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

THOMAS H. CASEY, CHAPTER 7 TRUSTEE

UNITED STATES BANKRUPTCY COURT, CLERK OF THE COURT COSTS

Docket 22

Tentative Ruling:

Tentative for 8/3/21:
Allow as prayed. Appearance: optional

Party Information

Debtor(s):

Everado Eddie Gonzalez

Represented By
Shahnaz Hussain

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 4, 2021

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10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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**United States Bankruptcy Court
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Wednesday, August 4, 2021

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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, August 4, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, August 4, 2021

Hearing Room 5B

10:00 AM

8:21-11558 Parks Diversified, LP

Chapter 11

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

Docket 1

Tentative Ruling:

Tentative for 8/4/21:
Deadline for filing plan and disclosure, October 1, 2021. Claims bar 60 days
after dispatch of notice.

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 4, 2021

Hearing Room 5B

10:00 AM

8:19-11153 Harry L Morris, Jr.

Chapter 11

#2.00 Motion For Approval Of Chapter 11 Disclosure Statement And Copy Of Plan Of Reorganization
(cont'd from 6-23-21)

Docket 159

Tentative Ruling:

Tentative for 8/4/21:

The court agrees with the opposition on the question of lumping two different classes together into one class, 6B, but then trying to justify different payment percentages based upon whether they hold separate property or community property claims. The more logical approach would be two separate classes. But more fundamentally, the court is unclear why we are doing this through a Chapter 11 plan at all; why cannot a Chapter 7 trustee perform the same tasks? If the argument is lesser costs, explain.

Tentative for 4/21/21:

Given that the disclosure statement was amended only on April 15, it would appear that a continuance is in order. It also seems that this case is likely to come down to a dispute over the interplay between payment of community debts, payment of equalization, homestead and characterization of certain claims. At the very least the nature of the dispute should be clearly set forth in the disclosure statement and discussion had over what happens if the court ends up ruling against debtor in whole or in part.

Continue.

Tentative for 2/10/21:

The DS has some problems as Debtor seems to admit, especially surrounding the details of the proposed sale. In the reply, Debtor states that the DS will be amended to include details of a pending (?) sale of his real

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CONT... Harry L Morris, Jr.
property.

Chapter 11

Debtor also concedes that amendment to the DS is required as to the Buncher claim . Debtor also disputes the allegation of fraud in connection with the MORs because he claims that his monthly alimony payments are deducted before funds are added to his DIP account. It is not clear from Ms. Morris' opposition whether she is conceding that Debtor is current on his monthly alimony obligations. Debtor also claims that the opposition confuses "impaired" and "disputed" when discussing Class 2 creditors such as Deutsche Bank and County of Orange. To be clear, Debtor is asserting that those claims are disputed.

In sum, the DS requires amendment, as Debtor seems to concede. The sale of real property that the entire plan depends upon has not been consummated, despite an alleged sale contract being in place. As the U.S. Trustee points out, there is no timeline for the sale of the property. Some of Mrs. Morris' opposition raise issues of confirmation, not necessarily of adequate disclosure. Still, when the DS is amended, Debtor would do well to take some of Mrs. Morris' comments to heart and address them, particularly, the community property/community debt portion of the opposition. As the U.S. Trustee points out, the feasibility of the plan is open to question. Thus, the hearing on the adequacy of the DS should be continued to allow for a sale to be actually completed (or at least imminent) and for Debtor to address the concerns put forth by the U.S. Trustee and Mrs. Morris. It appears that a motion to approve the sale of real property has been filed and is on calendar for 3/10/21. Continue to either that date or shortly thereafter to allow corrections and supplements to DS.

Party Information

Debtor(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

Movant(s):

Harry L Morris Jr.

Represented By
Caroline S Kim

**United States Bankruptcy Court
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Wednesday, August 4, 2021

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10:00 AM

8:20-10269 Rafik Youssef Kamell

Chapter 11

#3.00 Motion for Order: (1) Approving Assignment of Judgment Subject to Liens Per 11 U.S.C. § 363(b); (2) Approving Overbid Procedures; and (3) Waiver of Federal Rule of Bankruptcy Procedure 6004(h)

Docket 163

Tentative Ruling:

Tentative for 8/4/21:

The court agrees that the judgment debtor has no standing to complain. Moreover, the timeliness of renewal under state law is an independent question which can and should be looked after asap. There may be application of §108; the court makes no finding one way or the other. Since no creditor has objected the court sees no reason to question the exercise of business judgment. grant

Party Information

Debtor(s):

Rafik Youssef Kamell

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
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Wednesday, August 4, 2021

Hearing Room 5B

11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

**#4.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 7-28-21)**

Docket 1

Tentative Ruling:

Tentative for 8/4/21:
See #s 5 and 6.

Tentative for 7/28/21:
See #s 14-16.

Tentative for 6/23/21:
Continue to adequacy of disclosure or confirmation hearing.

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:

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CONT... Bridgemark Corporation

Chapter 11

Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

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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Judge Theodor Albert, Presiding
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Wednesday, August 4, 2021

Hearing Room

5B

11:00 AM

8:20-10143 Bridgemark Corporation

Chapter 11

#5.00 Joint Motion For Order Confirming Joint Chapter 11 Plan of Liquidation Proposed by Bridgemark Corporation and Placentia Development Company, LLC, Dated as of June 30, 2021
(con't from 7-28-21)

Docket 501

Tentative Ruling:

Tentative for 8/4/21:

If the court is correctly informed, the only controversy as yet unresolved is the status of the four mineral rights licensor claims (see #6) and whether the closing and abandoning to be done under the plan (to be performed by the plan agent under the Liquidation Trust and appointed under the plan) constitutes a post-petition breach of the leases giving rise to a monetary administrative claim under §§503 and 507(a)(2). The court has seen nothing further on this point. This might not necessarily prevent confirmation at this time if the upper limit of the possible claims is financially provided for (with suitable assurances) under the plan, since the holders of allowed administrative claim are entitled to be paid in full, in cash as of the effective date of the plan under §1129(9). While the treatment of administrative claims under Article II ¶2.2 may provide some leeway on timing of payment, that is not paralleled by the code definition and requirements at §1129(a)(9)(B) and the plan definition of "effective date." For the court to confirm, among other things, must be proved the feasibility of the plan as provided under § 1129(a)(11). So, the bottom line is, can those mechanisms and assurances be given now or must plan confirmation await determination on the allowance issues?

Tentative for 7/28/21:

Confirm. See #s 15 and 16 to be reflected in order.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By

**United States Bankruptcy Court
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Wednesday, August 4, 2021

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11:00 AM

CONT... Bridgemark Corporation

William N Lobel
Matthew J Pero

Chapter 11

**United States Bankruptcy Court
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8:20-10143 Bridgemark Corporation

Chapter 11

**#6.00 Joint Objection of Bridgemark Corporation And Placentia Development Company, LLC Claims:
(con't from 7-28-21)**

Claim No. 17-1

Mary Jean Boyd Todd

Claim No. 19-1

Sheri C. Parks Trust

Claim No. 20-1

**Survivors Trust of Politiski Trust
(aka Plitiski Survivors Trust)**

Claim No. 21-1

Ridley J. Politiski

Claim No. 22-1

Michael P. Politiski

Claim No. 23-1

Marianne P. Covington

**Claim No. 24-1
Family Trust**

Richard And Karen Clements

**Claim No. 26-1
Revocable Trust**

The Catherine S. Chandler

Claim No. 27-1

D. McFarland Chandler Jr.

Claim No. 28-1

D. McFarland Chandler

Claim No. 29-1

Ethel Severson Living Trust

Claim No. 31-1

Robert Hall

Claim No. 32-1

John Kraemer

Claim No. 33-1

Christine Vetter Pate

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CONT...

Bridgemark Corporation

Chapter 11

Claim No. 34-1

Susan Elizabeth Vetter

Claim No. 35-1

Laughlin E. Waters

Docket 478

Tentative Ruling:

Tentative for 8/4/21:
See #5. Status?

Tentative for 7/28/21:
Sustain. The arguments of Mr. Kraemer, and by extension any others similarly situated, seem beside the point (or at least unclear) based on the court's understanding of events. The leases have all been assumed by prior order of this court and assigned to a buyer. No abridgment was made of rights thereunder. If rights exist for access to mineral rights holders and/or payment for extraction under those leases, and/or resistance to capping of wells, they remain so in the hands of the transferee. But the court is not inclined to get into advisory opinions on what might be triggered by future events and those disputes, if any, will be the domain of another court. The objectors allege that all monetary claims that might be characterized as administrative have already been paid, and thus claims for those sums disallowed. The court sees nothing to dispute that allegation.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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

CONT... Bridgemark Corporation

Matthew J Pero

Chapter 11

**United States Bankruptcy Court
Central District of California
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10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1618754249>

ZoomGov meeting number: 161 875 4249

Password: 742449

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

**United States Bankruptcy Court
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Chapter

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: <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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CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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Thursday, August 5, 2021

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

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

**#1.00 STATUS CONFERENCE RE: Complaint Of NonDischargeability And Exception
From Discharge Of Debts
(cont'd from 9-3-20)**

Docket 1

Tentative Ruling:

Tentative for 8/5/21:
Extend temporary extension about 9 months.

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

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10:00 AM

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

Chapter 7

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy S. Griffithe

Pro Se

Plaintiff(s):

Steven Bagot

Represented By
Heidi Urness

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, August 5, 2021

Hearing Room 5B

10:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

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

**#2.00 STATUS CONFERENCE RE: Motion For Temporary Abstention
(set at hearing held on 3-5-2020)
(cont'd from 9-03-20)**

Docket 29

Tentative Ruling:

Tentative for 8/5/21:
Same as #1.

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

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

Chapter 7

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 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

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CONT... Guy S. Griffithe

Chapter 7

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 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

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CONT... Guy S. Griffithe

Chapter 7

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 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

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CONT... **Guy S. Griffithe**
conference approximately 180 days out for evaluation.

Chapter 7

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

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

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:19-12736 Christina Stolze Lopez

Chapter 7

Adv#: 8:20-01114 Kosmala v. Lopez

#3.00 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)
(cont'd from 4-29-21 per order on stip. to cont. s/c entered 4-14-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-7-21 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 7-22-21**

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

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CONT... Christina Stolze Lopez

Chapter 7

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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10:00 AM

8:20-12910 Michelle Lynn Light

Chapter 7

Adv#: 8:21-01006 King City Entertainment v. Baker, II et al

#4.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523(a)(2)(A) and 523(a)(4) (cont'd from 6-24-21)

Docket 1

Tentative Ruling:

Tentative for 8/5/21:
Status re default/prove up?

Tentative for 6/24/21:
Default entered April 26. Status of motion for entry of judgment? Court appearance for that is optional as a judgment can be supported by affidavit.

Tentative for 4/22/21:
Why no status report?

Party Information

Debtor(s):

Michelle Lynn Light

Represented By
Richard G Heston

Defendant(s):

Joseph Leon Baker II

Pro Se

Michelle Lynn Light

Pro Se

Joint Debtor(s):

Joseph Leon Baker II

Represented By
Richard G Heston

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10:00 AM

CONT... Michelle Lynn Light

Chapter 7

Plaintiff(s):

King City Entertainment

Represented By
Andrew D. Weiss

Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:20-13315 Gary T Hernandez

Chapter 7

Adv#: 8:21-01015 Morris v. Hernandez

#5.00 STATUS CONFERENCE RE: Complaint For Determination Of Dischargeability Under 11 USC Section 523(A)(6) Of Debts Of Creditor Victoria Morris (cont'd from 7-01-21)

Docket 1

Tentative Ruling:

Tentative for 8/5/21:
Deadline for completing discovery: November 15, 2021
Last date for filing pre-trial motions: December 6, 2021
Pre-trial conference on: January 6, 2022
Joint pre-trial order due per local rules.

Tentative for 7/1/21:
Still no status report? Why shouldn't the court dismiss?

Tentative for 6/3/21:
Why no status report?

Party Information

Debtor(s):

Gary T Hernandez

Represented By
Michael J Hemming

Defendant(s):

Gary T Hernandez

Pro Se

Plaintiff(s):

Victoria Morris

Represented By
Bruce A Wilson

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CONT... Gary T Hernandez

Chapter 7

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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Courtroom 5B Calendar**

Thursday, August 5, 2021

Hearing Room 5B

10:00 AM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

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

**#6.00 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)
(cont'd from 6-03-21) [Holding Date]**

Docket 1

Tentative Ruling:

Tentative for 8/5/21:
Continued to September 23, 2021 at 10:00 a.m. Appearance waived.

Tentative for 6/3/21:
Schedule trial about 60 days hence. In person, virtual or hybrid?

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

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

Thursday, August 5, 2021

Hearing Room 5B

10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

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

Veronica Marfori

Represented By
Evan C Borges

Dennis Hartmann

Represented By
Thomas W. Dressler

Plaintiff(s):

Richard A. Marshack

Represented By
Sharon Oh-Kubisch

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

Thursday, August 5, 2021

Hearing Room 5B

10:00 AM

CONT... Luminance Recovery Center, LLC

Chapter 7

Robert S Marticello

Trustee(s):

Richard A Marshack (TR)

Represented By

D Edward Hays

David Wood

Kyra E Andrassy

Jeffrey I Golden

Beth Gaschen

Matthew Grimshaw

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

Thursday, August 5, 2021

Hearing Room 5B

11:00 AM

8:17-11276 Stacey Lynn Schmidt

Chapter 7

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

#7.00 Defendant Stacey Lynn Schmidt's Motion For Sanctions Against Plaintiff Tracy Marx For Her Failure To Redact From Multiple Filings In Adversary Proceeding Pursuant To Rule 9037(a); Fed. R. Civ. P. 45

Docket 178

Tentative Ruling:

Tentative for 8/5/21:

This is a motion for sanctions addressed to the court's general equitable powers under §105 given that the prohibition against revealing sensitive information in subpoenas and the like does not have a separate remedy specified. The problem is that these violations are now four years old and in the interim there has been a protective order, a \$500 sanction paid (but late) but regrettably no effort on Plaintiff's part to clean up past violations. One might have expected the issue of further sanctions to have been part of that protective order, if appropriate, and now, four years on, the question of laches arises. Further, the court does not want by its order addressing long-ago violations, and after a full trial on the merits of the controversy, to add to the continuing spite and unpleasantness between these parties. Rather, the court urges the parties to move on and leave all of this behind. On redaction issues, the movant is authorized by this order to have the clerk's office redact all remaining offending documents showing personal i.d. from the record.

Party Information

Debtor(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Defendant(s):

Stacey Lynn Schmidt

Represented By
Christine A Kingston

Plaintiff(s):

Tracy M Marx

Represented By

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

Thursday, August 5, 2021

Hearing Room 5B

11:00 AM

CONT... Stacey Lynn Schmidt

Chapter 7

Joseph A Weber
Fritz J Firman

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 10, 2021

Hearing Room

5B

10:30 AM

8:00-00000

Chapter

#0.00 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/1609266921>

ZoomGov meeting number: 160 926 6921

Password: 496565

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Tuesday, August 10, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

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: <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, August 10, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, August 10, 2021

Hearing Room 5B

10:30 AM

8:20-11698 Daryanaz Mostajabaldaveh

Chapter 13

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA LEASE TRUST
Vs.
DEBTOR**

Docket 42

Tentative Ruling:

Tentative for 8/10/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Daryanaz Mostajabaldaveh

Represented By
William Huestis

Movant(s):

Toyota Lease Trust, as serviced by

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, August 10, 2021

Hearing Room 5B

10:30 AM

8:11-13618 James E Tuley and Susan B Tuley

Chapter 11

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-22-21)**

**WELLS FARGO BANK, N.A.
Vs.
DEBTORS**

Docket 179

Tentative Ruling:

Tentative for 8/10/21:
Status? Has the motion been served per Rule 4001?

Tentative for 6/22/21:
APO status?

Tentative for 5/11/21:
No service on committee, UST or twenty largest creditors. Continue as to those parties.

Appearance: optional

Party Information

Debtor(s):

James E Tuley

Represented By
Bryan L Ngo

Joint Debtor(s):

Susan B Tuley

Represented By
Bryan L Ngo

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

Tuesday, August 10, 2021

Hearing Room 5B

10:30 AM

CONT... James E Tuley and Susan B Tuley

Chapter 11

Movant(s):

Wells Fargo Bank, N.A., as Trustee

Represented By
Theron S Covey
Sean C Ferry

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

Tuesday, August 10, 2021

Hearing Room 5B

10:30 AM

8:18-12373 Naiades Perez Paule

Chapter 13

**#3.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-15-21)**

**WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST,
NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM MORTGAGE
ACQUISITION TRUST
Vs
DEBTOR**

Docket 51

Tentative Ruling:

Tentative for 8/10/21:
Grant absent current status under the plan or APO stipulation.

Appearance: required

Movant alleges 4 payments are missed post confirmation. While it is encouraging that debtor might have made the payments for February through April, this alone does not solve the problem. Grant absent motion to modify on file or current status post confirmation. Appearance required.

Party Information

Debtor(s):

Naiades Perez Paule

Represented By
David A Tilem

Movant(s):

Wilmington Savings Fund Society,

Represented By
Eric P Enciso

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

Tuesday, August 10, 2021

Hearing Room 5B

10:30 AM

CONT... Naiades Perez Paule

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, August 10, 2021

Hearing Room 5B

10:30 AM

8:19-12479 Judie Kay Brust

Chapter 13

**#4.00 Motion for relief from the automatic stay REAL PROPERTY
[RE: 12791 Sylvan St, Garden Grove, CA 92845]
(cont'd from 7-27-21)**

**CHAMPION MORTGAGE COMPANY
Vs.
DEBTOR**

Docket 43

***** VACATED *** REASON: CONTINUED TO 9-21-21 AT 10:30 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 8
-09-21**

Tentative Ruling:

Tentative for 7/27/21:
Grant absent current status or APO.

Tentative for 6/22/21:
Grant absent post confirmation current status or agreed APO.

Party Information

Debtor(s):

Judie Kay Brust

Represented By
Christopher J Langley

Movant(s):

Champion Mortgage Company

Represented By
Sean C Ferry
Jenelle C Arnold
Joseph C Delmotte

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

Tuesday, August 10, 2021

Hearing Room 5B

10:30 AM

CONT... Judie Kay Brust

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, August 10, 2021

Hearing Room

5B

10:30 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 6-08-21)**

**WILMINGTON SAVINGS FUNDSOCIETY, FSB
Vs
DEBTORS**

Docket 156

Tentative Ruling:

Tentative for 8/10/21:
Grant absent APO stipulation.

Appearance: required. This has been continued several times.

Tentative for 6/8/21:
Status? This has been continued several times pending some kind of
settlement yet nothing is reported. Grant absent agreement or better showing
of any reason to continue the stay.

Tentative for 4/20/21:
What is the status the prompted the original continuance? Absent compelling
reasons otherwise, grant.

Appearance: required

Tentative for 2/23/21:
This is a Chapter 7, thus "necessary to a reorganization" does not apply

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

Tuesday, August 10, 2021

Hearing Room

5B

10:30 AM

CONT... **Hoan Dang and Diana Hongkham Dang**

Chapter 7

within the meaning of §362(d)(2). There also appears to be some equity. The question of relief of stay revolves around whether there is "cause" including lack of adequate protection within the meaning of §(d)(1). According to the Trustee, there is a settlement pending that will yield about \$300,000 for benefit of the estate which requires a transfer of the estate's interest in the property. That sounds good for the estate but there is no suggestion any of that inures to the benefit of the creditor, so "adequate protection" is not assured. So the court is tasked with deciding whether the equity slice alone amounting to about 18% (assuming these numbers) is enough to afford adequate protection. That is a close question since the usual minimum threshold is about 20%. The court is inclined to continue the stay for a limited period, say 60 days to allow consummation of the pending settlement. More than that should not be expected.

Continue.

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):

Wilmington Savings Fundsociety,

Represented By
Sean C Ferry

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, August 10, 2021

Hearing Room 5B

11:00 AM

8:13-11733 Petros Sakzlyan and Zarui Sakzlyan

Chapter 7

#6.00 Motion to Reopen Debtor's Chapter 7 Case To Avoid Liens

Docket 18

Tentative Ruling:

Tentative for 8/10/21:
Grant.

Party Information

Debtor(s):

Petros Sakzlyan

Represented By
Sammy Zreik

Joint Debtor(s):

Zarui Sakzlyan

Represented By
Sammy Zreik

Movant(s):

Petros Sakzlyan

Represented By
Sammy Zreik

Zarui Sakzlyan

Represented By
Sammy Zreik

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 10, 2021

Hearing Room 5B

11:00 AM

8:20-12718 Patricia Arlene Showalter

Chapter 7

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

RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE

Docket 25

Tentative Ruling:

Tentative for 8/10/21:
Allowed as prayed.

Appearance: optional

Party Information

Debtor(s):

Patricia Arlene Showalter

Represented By
Nicholas J Cochran

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 10, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#8.00 Fourth Interim Fee Application for Compensation and Reimbursement of Expenses, Period: 11/14/2020 to 7/9/2021.

SNELL & WILMER L.L.P., SPECIAL LITIGATION COUNSEL FOR KAREN SUE NAYLOR, CHAPTER 7 TRUSTEE

FEE:	\$13,907.50
EXPENSES:	\$37.62.

Docket 3029

Tentative Ruling:

Tentative for 8/10/21:
Allowed 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, August 10, 2021

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
Ashley M Teesdale

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

Tuesday, August 10, 2021

Hearing Room

5B

11:00 AM

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

Chapter 7

#9.00 Fourth Application For Compensation For Period: 8/9/2020 to 6/30/2021:

McLEOD LAW GROUP, APC FOR JOHN J McLEOD, SPECIAL COUNSEL:

FEE: \$3996.50

EXPENSES: \$0

Docket 3035

Tentative Ruling:

Tentative for 8/10/21:

Allowed 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, August 10, 2021

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
Ashley M Teesdale

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

Tuesday, August 10, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#10.00 Eighth Interim Fee Application for Allowance of Fees & Expenses
Period: 11/16/2020 to 7/13/2021

HAHN FIFE & COMPANY, ACCOUNTANT
FEE: \$15,390.00
EXPENSES: \$295.90

Docket 3032

Tentative Ruling:

Tentative for 8/10/21:
Allowed 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
Steven T Gubner
Jason B Komorsky

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

Tuesday, August 10, 2021

Hearing Room 5B

11:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Christopher Minier
Jerrold L Bregman
Todd C. Ringstad
Brett Ramsaur
Richard C Donahoo
Andrew Still
Ashley M Teesdale

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

Tuesday, August 10, 2021

Hearing Room 5B

11:00 AM

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

Chapter 7

#11.00 Application For Payment Of Ninth Interim Fees And/Or Expenses For Period:
9/1/2020 to 4/30/2021:

RINGSTAD & SANDERS LLP, TRUSTEE'S ATTORNEY:

FEE: \$379695.50

EXPENSES: \$20340.96

Docket 3034

Tentative Ruling:

Tentative for 8/10/21:
Allowed 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, August 10, 2021

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

Wednesday, August 11, 2021

Hearing Room

5B

10:00 AM

8:00-00000

Chapter

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<https://cacb.zoomgov.com/j/1614992483>

ZoomGov meeting number: 161 499 2483

Password: 038263

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Wednesday, August 11, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

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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:

- NONE LISTED -

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

Wednesday, August 11, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

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

Wednesday, August 11, 2021

Hearing Room 5B

10:00 AM

8:17-10517 Lisa Hackett

Chapter 11

**#1.00 CONT Scheduling And Case Management Conference
(cont'd from 6-30-21)**

[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 8/11/21:

Why no updated status report? Can a final decree be expected soon?

Tentative for 6/30/21:

Continue to August 11 @ 10:00AM. More continuances should not be expected.

Appearance: excused

Tentative for 3/3/21:

It sounds from the December status report like the plan is being paid as agreed but since no updated report was filed, the court is uncertain. Will debtor seek to administratively close or obtain a final decree? Timetable?

Tentative for 12/9/20:

Why no updated status report?

Appearance: required

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

Wednesday, August 11, 2021

Hearing Room 5B

10:00 AM

CONT... Lisa Hackett

Chapter 11

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

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

Wednesday, August 11, 2021

Hearing Room 5B

10:00 AM

8:21-11558 Parks Diversified, LP

Chapter 11

#2.00 Application Of Debtor For Authority To Employ Goe Forsythe & Hodges, LLP As General Counsel

Docket 14

Tentative Ruling:

Tentative for 8/11/21:

The court is not inclined to sort out the authorization to file the petition dispute at this time. That will need to be decided soon, in conjunction with the Parks' motion to dismiss. But the court is very concerned with where this Chapter 11 case is going, and how the case could possibly succeed with no stated third party creditors, virtually no assets and the ownership so hotly disputed. The court would like a better explanation of the goals and purposes of this as a reorganization proceeding.

No tentative.

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe

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

Wednesday, August 11, 2021

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

- #3.00** PRE-TRIAL CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (11 (Recovery of money/property - 542 turnover of property)), (72 (Injunctive relief - other)), (91 (Declaratory judgment))
(set from s/c hrg held 3/3/21)
(cont'd from 6-02-21)

Docket 1

Tentative Ruling:

Tentative for 8/11/21:
Why no status report? Results of the mediation?

Tentative for 6/2/21:
Apparently the parties are still in mediation. Continue about 60 days.

Tentative for 3/3/21:
Status conference continued to:

Deadline for completing discovery: April 15, 2021
Last date for filing pre-trial motions: April 30, 2021
Pre-trial conference on: June 2, 2021 @ 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**

Wednesday, August 11, 2021

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

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.

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).

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

Wednesday, August 11, 2021

Hearing Room 5B

10:00 AM

CONT... Ron S Arad

Chapter 11

Tentative for 11/1/18:

Deadline for completing discovery: March 7, 2019

Last date for filing pre-trial motions: February 28, 2019

Pre-trial conference on: March 7, 2019

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 31, 2019.

Tentative for 8/2/18:

Status conference continued to November 1, 2018 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by October 15, 2018.

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Defendant(s):

DEPARTMENT OF THE

Represented By
Jolene Tanner

UNITED STATES OF AMERICA

Represented By
Jolene Tanner

Plaintiff(s):

Ron S Arad

Represented By
G Bryan Brannan

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

Thursday, August 12, 2021

Hearing Room 5B

10:00 AM

8:00-00000

Chapter

#0.00 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/1613118404>

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Password: 408675

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 12, 2021

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10:00 AM

CONT...

Chapter

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: <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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Hearing Room 5B

10:00 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 12, 2021

Hearing Room 5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 11

Adv#: 8:19-01065 BP Fisher Law Group, LLP v. LoanCare, LLC.

**#1.00 STATUS CONFERENCE RE: Complaint For (1) Breach of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 5-13-21 per order appr. stip to cont. s/c entered 4-12-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-04-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO EXTEND DEADLINE TO
RESPOND TO COMPLAINT AND CONTINUING STATUS
CONFERENCE ENTERED 6-16-21**

Tentative Ruling:

Tentative for 2/11/21:
A stipulation to continue?

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
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Thursday, August 12, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01131 OneSource Distributors, LLC v. Dang et al

**#2.00 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)
(cont'd from 6-24-21 per order approving stip. to cont. s/c entered 6-11-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
RESPOND TO THE COMPLAINT ENTERED 7-14-21**

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

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 12, 2021

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10:00 AM

CONT... Hoan Dang

Arturo M Cisneros
James C Bastian Jr

Chapter 7

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Central District of California
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Thursday, August 12, 2021

Hearing Room 5B

10:00 AM

8:20-11631 Hoan Dang

Chapter 7

Adv#: 8:20-01133 Toll Bros, Inc. v. Dang et al

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt
(cont'd from 6-24-21 per order approving stip. to cont s/c entered 5-21-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND EXTENDING DEADLINE FOR DEFENDANTS TO
RESPOND TO THE COMPLAINT ENTERED 7-12-21**

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

**United States Bankruptcy Court
Central District of California
Santa Ana
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10:00 AM

CONT... Hoan Dang

James C Bastian Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, August 12, 2021

Hearing Room 5B

10:00 AM

8:20-12166 Stephen F. Sturm

Chapter 13

Adv#: 8:20-01173 Sturm v. Dan Cook Inc

**#4.00 STATUS CONFERENCE RE: Complaint To Determine Nature, Extent And Priority Of Lien; Declaratory Relief; Disallowance Of Claim
(cont'd from 6-24-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-09-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION RE TOLLING OF RESPONSE
DATES AND CONTINUING STATUS CONFERENCE ENTERED 8-02-21**

Tentative Ruling:

Tentative for 6/24/21:

In view of the continuing stipulated stay, continue status conference to August 12, 2021. It is expected that a responsive pleading will by then be on file as the extension lapses July 7, 2021.

Party Information

Debtor(s):

Stephen F. Sturm

Represented By
Joseph A Weber

Defendant(s):

Dan Cook Inc

Pro Se

Plaintiff(s):

Stephen F. Sturm

Represented By
Fritz J Firman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, August 12, 2021

Hearing Room 5B

10:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:21-01011 Vibe Micro, Inc. v. Remares Global, LLC

**#5.00 STATUS CONFERENCE RE: Complaint For: (1) Equitable Subordination;
(2) Recharacterization; And (3) Objection To Claim
(cont'd from 6-29-21)**

Docket 1

Tentative Ruling:

Tentative for 8/12/21:
No status report? See #8

Tentative for 6/29/21:
No status report?

Tentative for 5/27/21:
See #13. The parties both speak of summary judgment motions. Should this status conference be continued until a date following the projected filings of same? If not, the following shall apply: complete discovery Nov. 1, 2021; last date for pretrial motions December 10; Pretrial Conference January 20, 2022. This case is uniquely suited for mediation. Should it be ordered?

Appearance: Required.

Tentative for 5/13/21:
Continue to May 27, 2021 @ 11:00 a.m. to coincide with hearing on motion to dismiss.

Party Information

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10:00 AM

CONT... Igor Shabanets

Chapter 7

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Remares Global, LLC

Pro Se

Plaintiff(s):

Vibe Micro, Inc.

Represented By
Aaron J Malo
Jacqueline A Gottlieb

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, August 12, 2021

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

- #6.00** PRE-TRIAL 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)**
(set from s/c hrg held on 10-15-20)
(cont'd from 7-08-21 per order approving stipulation to cont. pre-trial conf. entered 6-24-21)

Docket 1

Tentative Ruling:

Tentative for 8/12/21:

Set trial date. Ten contiguous dates for trial may result in a later date.

Tentative for 4/29/21:

Neither side can agree to a joint pretrial stipulation? The whole point is defeated by two unilateral statements, and the court is not disposed to devote an entire week of trial dealing with this dispute in its current raw form. It's rather straightforward. There will be some points too obvious for there to be serious controversy. They are agreed and belong on a list. There will inevitably be items not agreed, in which case there will be a list of items that must be litigated. This hopefully is a smaller list but it must be a list nevertheless. Witnesses and exhibits will be identified (numbers for plaintiff and letters for defendant). Exhibits will be presented in three ring binders. Parties are to meet and confer and make a serious effort to do this right. Another failure of this sort will not be well received. Continue for approximately 90 days.

Tentative for 10/15/20:

Deadline for completing discovery: January 29, 2021

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CONT... Young Ha Kim

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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.

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

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Thursday, August 12, 2021

Hearing Room 5B

11:00 AM

8:20-11517 Boyu Liu

Chapter 7

Adv#: 8:20-01129 FS Hawaii Inc v. Liu

- #7.00** Motion Of Global Adult Health Care Services, LLC; Salida Del Sol Cbas; Salida Del Sol Adult Day Health Care, LLC And Zuxi Song To Quash Or Limit Scope Of Subpoena Served Upon JP Morgan Chase Bank N.A.
(cont'd from 6-10-21)

Docket 48

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 11:00 A.M.
PER ORDER ON STIPULATION TO DEBTOR BOYU LIU, PLAINTIFF
FS HAWAII, AND THIRD PARTIES TO CONTINUE HEARING OF
MOTION TO QUASH CHASE SUBPOENA; CONTINUE HEARING OF
MOTION TO COMPEL THIRD PARTY SUBPOENAS ENTERED 8-11-21**

Tentative Ruling:

Tentative for 6/10/21:

There is no indication that the parties have met and conferred as is required under LBR 7026-1 (c) before calling upon the court to resolve their discovery disputes. The purpose of the rule is to conserve judicial resources by forcing the parties to confront in a systemized way their discovery disputes. It is often the case that disputes can be resolved or at least narrowed if the parties are required to sit down and discuss what can be agreed vs. what must be decided by the court, and not simply argue past each other. This court is not inclined to waive this requirement here.

However, to help the discussions along the court offers a few observations: 1. There is no question that parties have standing to question discovery processes aimed at their own bank accounts. Any contention to the contrary is borderline frivolous; 2. Given the nature of the allegations in this suit, i.e. that the movants are entities that are or were de facto owned and controlled by the debtors, and thus may be undisclosed assets of the estate, it is to be expected that the Plaintiff will cast a wide net in an effort to prove that which may exist in reality notwithstanding camouflage in formalities and labels. This is especially so where, as alleged here, there may have been active efforts to disguise that relationship. Some circumstantial evidence is offered for that conclusion, so the court cannot say on this record that the

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CONT... Boyu Liu

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requests are wildly overbroad or outside of what may be relevant or reasonable. The fact that a relative (who lives in China?) but continues ostensibly to operate these entities after transfer by debtor of shares to her, as alleged here, mitigates the charge that the requests are burdensome or oppressive, or that there are not serious underlying questions that need answering. Such cases are typically "documents cases" i.e. put together like a jigsaw puzzle from thousands of seemingly innocuous pieces to make a true picture emerge. This is not to say that counsel cannot, if good faith efforts are made, agree to limit the records or years of lookback, or to obtain records in manageable stages.

But the court will not decide until the parties have done what is required of them under the LBRs, and the parties are reminded that under subsection (c)(4) sanctions can be imposed for failure to cooperate in the requirements of the rule.

Continue about sixty days for compliance with LBRs.

Party Information

Debtor(s):

Boyu Liu

Represented By
Richard G Heston

Defendant(s):

Boyu Liu

Represented By
Richard G Heston

Plaintiff(s):

FS Hawaii Inc

Represented By
Carlos A De La Paz

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:21-01011 Vibe Micro, Inc. v. Remares Global, LLC

#8.00 Motion to Abstain from Hearing Adversary Proceeding Under 28 USC Section 1334 (c)(2) (Mandatory Abstention); and in the Alternative to Abstain from Hearing Adversary Proceeding Under 28 USC Section 1334(c)(1) (Discretionary Abstention)

Docket 29

Tentative Ruling:

Tentative for 8/12/21:

This is defendant Remares Global, LLC's ("Remares") motion for this court to abstain from hearing this adversary proceeding under 28 USC Section 1334 (c)(2) (Mandatory Abstention) or in the alternative, to abstain from hearing this adversary proceeding under 28 USC Section 1334(c)(1) (Discretionary Abstention). Plaintiff, Vibe Micro, Inc. ("Vibe Micro") filed a limited opposition.

1. Background

On February 22, 2021, Vibe Micro filed the complaint in this matter against Remares for: (1) Equitable Subordination, (2) Recharacterization, and (3) Objection to Claim. All of Vibe Micro's claims are based upon its allegations that the Orange County Superior Court ("State Court") improperly entered Remares' \$10.3 million sister-state judgment against debtor Igor Shabanets ("Debtor") and that the State Court improperly issued abstracts of judgment ("Abstract"), writs of execution ("Writs") and an order to appear for examination ("ORAP") in favor of Remares.

Remares argues that all of Vibe Micro's claims in this adversary proceeding are based upon its allegations concerning state law or interpretation of a state court order, such that:

(a) Remares' Florida certified judgment was insufficient to domesticate

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Igor Shabanets
a judgment in California.

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(b) Remares did not comply with California Code of Civil Procedure ("CCP") §1710.310 because it allegedly refused to "promptly" serve Debtor with the notice of sister-state judgment.

(iii) Remares failed to personally serve Debtor as allegedly required by a State Court order.

(iv) Remares did not give Debtor notice before it recorded its Abstract;
and

(v) Remares did not disclose to the State Court that Debtor had 14 remaining days to appeal the Florida judgment.

Additionally, several of Remares' affirmative defenses are arguably based upon state law as well, such as:

(i) Whether Vibe Micro has standing under CCP § 1710.40(b) to vacate the sister-state judgment.

(ii) Whether Vibe Micro lacks standing because all of Edward Mandel's Vibe Micro shares are owned by his bankruptcy estate.

(iii) Whether Vibe Micro lacks standing because it has no constitutional or prudential standing.

(iv) Whether Vibe Micro's claims are barred by a statute of limitation;
and

(v) Whether Vibe Micro's claims are barred by laches.

Remares argues that because many of Vibe Micro's allegations regarding whether Debtor has a valid claim and Remares' affirmative defenses concern state law, and whether Remares complied with the State Court order involves a state court interpretation of its order, this court has a mandatory duty to abstain from hearing a portion of this adversary matter, pursuant to 28 U.S.C. §1334(c)(2), as to the following issues:

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- (i) Whether Vibe Micro has standing to contest the sister-state judgment, the issuance of the Writs, ORAP, or any issued Abstracts.
- (ii) Whether Vibe Micro is barred by a statute of limitations to contest entry of the sister-state judgment.
- (iii) Whether Vibe Micro's claims are barred by laches.
- (iv) Whether the application for entry of sister-state judgment was legally deficient on its face (because Vibe Micro asserts both the clerk and a judge must certify the judgment).
- (v) Whether Remares obtained relief from the State Court to immediately enforce the sister-state judgment.
- (vi) Whether a State Case order required Remares to personally serve Debtor with the sister-state judgment and related papers, or whether substitute service was sufficient and if so whether done properly.
- (vii) Whether Remares promptly served the sister-state judgment under CCP §1710.30.
- (viii) Whether Remares obtained relief from the State Court to immediately enforce the sister-state judgment.
- (ix) Whether the State Court properly issued the Writs.
- (x) Whether the State Court properly issued the Abstracts.
- (xi) Whether the State Court properly issued the ORAP; and
- (xii) Whether the State Court intended that the recorded Abstracts would place a lien or liens on Debtor's property (collectively the "State Law Issues").

2. Mandatory and Permissive Abstention

Mandatory abstention is governed by 28 U.S.C. §1334(c)(2), which

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provides:

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"Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction."

Five elements must be shown for mandatory abstention to apply. They are that: "(a) the motion must be made on a timely basis, (b) the claim must be based on state law, (c) the claim cannot be either based on bankruptcy law or have arisen in a bankruptcy case, (d) the claim must not have been capable of being filed in a federal court absent bankruptcy jurisdiction, and (e) the claim must be capable of being timely adjudicated in state court." *Bally Total Fitness Corp. v. Contra Costa Retail Ctr.*, 384 B.R. 566, 570 (Bankr. N.D. Cal. 2008).

Even if mandatory abstention did not apply, certainly much if not all this adversary proceeding might fall within permissive abstention found at 28 U.S.C. §1334(c)(1): "...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 a particular proceeding arising under title 11 or arising in or related to a case under title 11." There might be some portions of the dispute that have little to do with California law, such as equitable subordination as found in 11 U.S.C. §510(c); but even so, as the court reads it, it has discretion from abstaining *entirely from the proceeding*, not just as it might be based on issue arising in or relate to title 11.

3. Both Parties Agree Abstention Is Appropriate, But on Which Issues?

As noted, Vibe Micro filed a limited opposition to this motion mainly based on various alleged procedural infirmities. Specifically, Vibe Micro points

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out that although Remares purportedly domesticated its Florida state court judgment against Debtor in the Orange County Superior Court, Vibe Micro has not yet been joined as a party to the Orange County action (referred to as the "Judgment action"). Thus, Vibe Micro argues, as it currently stands, such action does not provide the requisite forum for adjudication. As a remedy, Vibe Micro asserts that it has initiated a declaratory relief action against Remares in Orange County Superior Court (the "Declaratory Relief Action"). See Plaintiff's Exhibit B. Vibe Micro asserts that the Declaratory Relief Action seeks declarations from the Orange County Superior Court sufficient to resolve the disputes from which this court should abstain. Vibe Micro suggests that the abstention order should provide that the disputed issues shall be resolved within the Declaratory Relief Action (in which both Vibe Micro and Remares are parties) as opposed to solely within the Judgment Action (in which Vibe Micro is not a party).

Vibe Micro also points out that Remares' proposed scope of abstention is inappropriate because it seeks to give the Orange County Superior Court exclusive authority to decide whether Vibe Micro has standing to dispute Remares' domestication of the judgment. Vibe Micro argues that this is inappropriate because Vibe Micro's standing derives, at least in part, from the Bankruptcy Code. Vibe Micro also points out that Remares' proposed scope of abstention does not expressly allow the Orange County Superior Court to adjudicate certain critical matters that are dependent on state law issues, including: (i) whether the domesticated judgment is void; (ii) whether grounds exist to set aside the domesticated judgment; (iii) whether grounds exist to stay enforcement of the domesticated judgment; (iv) the scope and impact of any judgment-related liens; (v) whether any judgment-related liens should be set aside; and (vi) whether any judgment-related liens should be extinguished. As a proposed remedy, Vibe Micro suggests that this court enter an abstention order providing as follows:

1. This Court shall abstain from making the following determinations in this adversary proceeding:

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- a. Whether Remares' domesticated judgment is void.
- b. Whether grounds exist to set aside Remares' domesticated judgment.
- c. Whether grounds exist to vacate Remares' domesticated judgment.
- d. Whether Remares possesses a valid lien encumbering the real property located at 2 Monarch Cove, Dana Point, California 92629 and, if so, whether grounds exist to set aside such lien.
- e. Whether Remares possesses a valid lien encumbering the real property located at 9875 Rimmele Drive, Beverly Hills, California 90210 and, if so, whether grounds exist to set aside such lien.
- f. Whether Remares possesses a valid lien encumbering the disputed funds previously held by Merrill Lynch and, if so, whether grounds exist to set aside such lien.
- g. Whether grounds exist to stay enforcement of Remares' domesticated judgment.
- h. Whether grounds exist to extinguish any liens in favor of Remares.

2. The issues identified in Section 1 above shall be determined within the Declaratory Relief Action, or, if later agreed by Vibe Micro and Remares, within the Judgment Action.

3. This adversary proceeding shall be stayed pending the Orange County Superior Court's determination of the above-described issues.

4. This court shall retain its sole and exclusive authority to determine whether Vibe Micro has standing to challenge Remares' domesticated judgment and Remares' alleged liens against estate assets under 11 U.S.C. §§ 501, et seq.

5. This Court shall retain its sole and exclusive authority to determine

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whether Remares' claims should be equitably subordinated and/or recharacterized.

Remares argues that Vibe Micro's list of abstention issues is problematic because four of them are core bankruptcy issues (e.g., determination of liens), and the remaining issues impermissibly expand the abstention issues beyond those alleged in Vibe Micro's adversary complaint. Remares further argues that the action for declaratory relief in State Court is simply a litigation tactic to control the narrative and to, again, impermissibly expand the issues beyond those raised in its complaint. In any case, Remares argues, this court cannot order the abstention issues to be decided in the Declaratory Relief Action because it was not pending at the time of Debtor's bankruptcy petition. Remares cites *Security Farms v. International Brotherhood of Teamsters et al.*, 124 F. 3d 999, 1009 (9th Cir. 1997) for the proposition that "[a]bstention can exist only where there is a parallel proceeding in state court. That is, inherent in the concept of abstention is the presence of a pendent state action in favor of which the federal court must, or may, abstain."

Remares agrees that standing and statute of limitations issues should be decided by this court but argues that those issues should be decided while the State Court case is pending. Remares asserts that the court need only abstain from the following three issues:

1. Whether the application for entry of sister-state judgment was legally deficient on its face (because Vibe Micro asserts both the clerk and a judge must certify the judgment).
2. Whether a State Case order required Remares to personally serve Debtor with the sister-state judgment and related papers, or whether substitute service was sufficient and if so whether done properly.
3. Whether Remares promptly served the sister-state judgment under CCP § 1710.30.

Remares' argument that abstention is inappropriate on the issues

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raised in the declaratory relief action might have some merit because the declaratory relief action was unquestionably initiated post-petition and thus may not be a "parallel proceeding". Vibe Micro does hint that it may try to file a motion to intervene in the State Court case, but the court is uncertain where that would lead from a procedural standpoint. But this court finds the argument that there is no parallel proceeding unpersuasive. The original action initiated by Remares, the "Judgment Action" provides a "parallel proceeding" pending as of the petition insofar as the existence and efficacy of writs and abstracts are concerned, and/or Vibe Micro can readily move to intervene therein, and/or the parties can (and likely should) by stipulation combine the two state court actions, i.e., the Declaratory relief and Judgment actions, so that all the relevant allegations can be evaluated together.

The issue of Vibe Micro's standing to bring this adversary proceeding has not yet been definitively decided. But the court previously suggested that Vibe Micro likely does have standing through various sections of the bankruptcy code. See adopted tentative ruling denying Remares' Motion to Dismiss from May 27, 2021. Still, the court agrees that because standing is a fundamental prerequisite in this case, and this court has already opined in a Rule 12 context on same, such a determination should be made before the State Court litigation proceeds further. The same cannot as easily be said of the purported statute of limitations problem despite also being a threshold issue. The court understood that the statute of limitations issue(s) in this case derive from state law, not the bankruptcy code. If the court is mistaken, then perhaps the analysis changes; but as discussed in the court's adopted tentative ruling on Remares' motion to dismiss, it appears that the statute of limitations in question derived from CCP §1710.40. It seems that a state court could (and probably should) ably resolve this state law issue, making it appropriate for this court to abstain on the point.

4. Vibe Micro's List

Vibe Micro's list of issues for abstention does not seem to pose a significant procedural hurdle insofar as whether they are "core" or "non-core" issues. Remares has cited no authority suggesting that, during the pendency

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of a bankruptcy case, a state court is absolutely barred from determining the validity, extent, and/or priority of a lien despite being identified as "core" bankruptcy issues. Indeed, as noted above, the language from both 28 U.S.C. §§157(b)(2) and 1334(c)(1) is written as permissive, not mandatory. Section 157 provides:

"(b)(1) Bankruptcy judges *may* hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(K) determinations of the validity, extent, or priority of liens[.]" (italics added)

Section 1334 (c)(1) further provides that a bankruptcy court *may* abstain from a proceeding whether it arises under title 11 or is merely in or related to a case under title 11.

Similarly, Remares cites no authority to the effect that Vibe Micro is barred from raising arguments not explicitly (though arguably implicitly) made in the adversary complaint. Thus, the only issue that might require resolution before allowing State Court litigation to continue is Vibe Micro's standing to bring this adversary proceeding. All other issues appear to be capable of resolution in state court, and probably should be decided therein as they turn on issues of California (or Florida) law. However, the court is somewhat unclear whether for prudential reasons it should reserve the question of whether Remares' lien claim should be subject to equitable subordination, as the court views this doctrine as far more developed under bankruptcy law than under California law.

Grant in part. Vibe Micro's standing to bring this adversary proceeding will be decided before state court litigation proceeds further. The court will hear argument as to whether equitable subordination should also be determined solely by this court.

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Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Remares Global, LLC

Represented By
Alan W Forsley

Plaintiff(s):

Vibe Micro, Inc.

Represented By
Aaron J Malo
Jacqueline A Gottlieb
Michael A Wallin

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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Adv#: 8:21-01025 Superior Paving Company, Inc. v. Herigon

#9.00 Motion to Dismiss Adversary Proceeding for Failure to State a Claim Upon Which Relief can be Granted

Docket 7

Tentative Ruling:

Tentative for 8/12/21:

This is debtor Travis Herigon's ("Debtor" or "Defendant") motion to dismiss the complaint of plaintiff, Superior Paving Company, Inc. ("Plaintiff") 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. Background

Plaintiff is a paving contractor. On June 8, 2018, Plaintiff sent to HK General Contractors ("HK") a written "Proposal & Contract" to perform \$23,200 of construction work on the property located at 423 N. La Brea Ave., Inglewood, California 90302 which is owned by the Girl Scouts of Southern California (the "Girl Scouts"). HK signed the contract on June 18, 2018, 10 days later.

There were two relevant "change orders". One signed by HK on February 11, 2019 provided for an additional \$16,560 in work. The other approved via email on February 20, 2019 provided for an additional \$6,829 in work. The total due under the contract and the two change orders was \$46,589. Plaintiff provided all the requested work between February 18, 2019 (the "Start Date") and February 23, 2019 (the "Completion Date"). On February 20, 2019, Plaintiff sent an invoice to HK for the full amount of \$46,589. Other than a modest payment from a surety company based on the construction bond maintained by Debtor, no payment was ever made.

On September 18, 2019 Plaintiff sent a demand letter to Debtor and

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HK. The parties thereafter engaged in negotiations. Also, in September 2019, the attorney for Plaintiff sent a demand letter to the Girl Scouts. The Girl Scouts responded and advised Plaintiff that they had paid the amounts and explained that HK had provided the Girl Scouts with conditional and unconditional releases allegedly signed by Plaintiff. Plaintiff alleges that the releases, dated August 4, 2018 for \$3,848.40, October 19, 2018 for \$3,884.44 and December 14, 2018 for \$22,011.60, are forgeries. Each was signed by someone unknown to Plaintiff, allegedly on behalf of Plaintiff. Plaintiff alleges that while the parties were discussing settlement, Debtor formed at least two new entities (Oakum and THJ3). Debtor allegedly transferred HK's assets to these other entities and to himself personally, then closed HK.

On February 28, 2020, Plaintiff filed suit in the Los Angeles Superior Court commencing case number 20STCV08338 (the "State Court Action") against Debtor, HK and the other entities identified above. On March 4, 2021 a default judgment was entered against Debtor and the other entities in the sum of \$84,421.43. Debtor filed a voluntary Chapter 7 petition in this case on April 2, 2021.

Plaintiff's Complaint seeks a determination of nondischargeability pursuant to 11 U.S.C. §523(a). The Complaint contains four claims for relief:

1. Fraud (§523(a)(2)(A))
2. Breach of Fiduciary Duty (§523(a)(4))
3. Embezzlement (§523(a)(4))
4. Conversion – Willful and Malicious (§523(a)(6))

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*

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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 allegations 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.* In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Fed R. Civ. P. 9(b). Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally. *Id.*

3. Plaintiff's Claims

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A. First Claim for Relief; Actual Fraud §523(a)(2)(A)

Plaintiff in its first cause of action alleges that Debtor engaged in fraudulent conduct and should have any portion of debt incurred through such action(s) held nondischargeable pursuant to 11 U.S.C. §523(a)(2)(A). This section in states in relevant part:

"(a) 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—

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, *or actual fraud*, other than a statement respecting the debtor's or an insider's financial condition[.]"
(italics added)

"To establish nondischargeability under § 523(a)(2)(A), a creditor must prove five elements: (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." *In re Gugliuzza*, 852 F.3d 884, 888 (9th Cir. 2017). (internal quotations and citation omitted).

Here, Debtor, assuming that this classic definition of "actual fraud" as articulated in cases like *Gugliuzza* governs, argues that Plaintiff has fallen woefully short of the pleading standard in Rule 9(b) and that what facts are alleged are extremely thin, and thus insufficient to support a cause of action under §523(a)(2)(A). In opposition to this motion, Plaintiff argues that every contract includes an implied covenant of good faith and fair dealings, which Plaintiff alleges Debtor breached. Plaintiff also asserts that the complaint alleges facts showing that Debtor engaged in fraudulent omission and deceptive conduct. Specifically, the complaint contains allegations that Debtor and his controlled entities forged certain documents entitled "Conditional Waiver and Release on Progress" ("Releases"), used the Releases to induce

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the Girl Scouts to deliver to Plaintiff certain funds intended for the payment of services to be rendered by Plaintiff, and that this occurred before Plaintiff even commenced work. Further, the Complaint includes allegations that Debtor intended to convert the funds, thereby making them unavailable to pay Plaintiff for work which had yet to begin. All these allegations are plainly in the Complaint, and taken as true, would satisfy the first element.

The second element is Debtor's purported knowledge of the falsity of his representations or of his deceptive conduct. Again, Plaintiff's Complaint appears to allege such knowledge of deceptive conduct. Plaintiff argues that the entity responsible for the alleged forgery satisfies this element as it would strain credulity to argue that the alleged forgeries were simply due to honest mistake.

The third element is an intent to deceive. Again, Plaintiff points to the alleged forgery, which, taken at face value, would appear to be a textbook example of an intent to deceive. Plaintiff also points to Debtor's creation of additional corporate entities, which Plaintiff argues, Debtor used to launder the funds and ultimately convert them to his own use and benefit. All of these allegations are in the Complaint.

The fourth element is Plaintiff's justifiable reliance. Plaintiff asserts that, at the time of occurrence, it had no reason to suspect anything was amiss. Debtor allegedly created and concealed the existence of the forged Releases before Plaintiff commenced work, but Debtor also issued two "Change Orders" after the forged Releases were created. The Change Orders were dated before Plaintiff's work began. These allegations are contained within the Complaint.

The fifth element is damages to the aggrieved party. Plaintiff has alleged that it was not paid for its work and has been damaged in the sum of \$84,421.43.

As noted, Rule 9(b) requires that facts relating to allegations of fraud, misrepresentation, deception, etc. be pled with particularity. The motion asserts, not necessarily wrongly, that the allegations in the Complaint are relatively thin, but this argument seems focused on the more classic definition

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of §523(a)(2)(A) as fraud in the inducement as discussed in cases like *Gugliuzza*. Debtor's defense as articulated in his response seems derived from a tortured reading of "implied good faith" as exists in all contracts (but the court for reasons below does not necessarily believe resort to contractual theories are needed). The nature of "actual fraud" for §523(a)(2)(A) has expanded since the Supreme Court's pronouncements in *Husky International Electronics v. Ritz*, 136 S. Ct. 1581 (2016). In *Husky*, the court explained:

"As a basic point, fraudulent conveyances are not an inducement-based fraud. Fraudulent conveyances typically involve a transfer to a close relative, a secret transfer, a transfer of title without transfer of possession, or grossly inadequate consideration. In such cases, the fraudulent conduct is not in dishonestly inducing a creditor to extend a debt. It is in the acts of concealment and hindrance." *Id.* at 1587. (Internal citation omitted)

The court concluded:

"Because we must give the phrase 'actual fraud' in §523(a)(2)(A) the meaning it has long held, we interpret 'actual fraud' to encompass fraudulent conveyance schemes, even when those schemes do not involve a false representation." *Id.* at 1590.

Thus, as the court reads it, it is enough if the debtor is charged with orchestration of a fraudulent scheme, such as a fraudulent conveyance, resulting in the plaintiff's damage as was the case in *Husky*. Some cases since have held in corollary that the fraudulent scheme must also have benefitted the debtor. See Order Vacating In Part The Court's March 27, 2018 Order Denying Debtor's Motion To Dismiss, *Huszi et al v. Huszi et al*, 17-ap-04834, ECF No.17 (E.D. Mich. March 28, 2018) citing *RES-GA v. Robertson (In re Robertson)*, 576 B.R. 684, 715 (Bankr. N.D. Ga. 2017)). A link to this case is provided here (PACER Account may be required): <https://ecf.mieb.uscourts.gov/doc1/096054070128>

Such a scheme is charged here as well. Moreover, the policy behind requiring particularity is mainly to put the defendant on notice of what the

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allegations are. There does seem to be just enough here that any reasonable person would understand what is being alleged. At this early stage, that is all the complainant need do. The court expects further details will emerge once discovery is complete. Thus, the first cause of action is likely sufficiently pled to survive Rule 12(b)(6) scrutiny.

**B. Second & Third Claims for Relief: Breach of fiduciary duty,
larceny and/or embezzlement §523(a)(4)**

The second claim is for nondischargeability based upon Debtor's alleged breach of fiduciary, embezzlement, or larceny under §523(a)(4).

It appears from Plaintiff's opposition that it is seeking nondischargeability based upon Debtor's alleged embezzlement of funds and larceny of same, but not necessarily breach of fiduciary duty(?). For purposes of §523(a)(4) the elements of embezzlement are as follows:

"(1) property rightfully in the possession of a nonowner; (2) a nonowner's appropriation of the property to a use other than which [it] was entrusted; and (3) circumstances indicating fraud." *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991).

Here, in the Complaint it is alleged that Debtor or his controlled entities, as the contractor, had the right to seek payment from the Girl Scouts on behalf of Plaintiff. The Plaintiff also alleges that Debtor or his controlled entities misappropriated the funds to a use other than for which they were intended. Plaintiff also points out that the forgery and creation of other corporate entities was part of the Debtor's scheme to misappropriate the funds. Debtor argues that the Complaint is insufficient because the money never actually belonged to Plaintiff because it was money from the Girl Scouts, and so Plaintiff cannot meet the elements of embezzlement. The court is obliged to take all allegations in the Complaint as true, and here, as the court reads the Complaint, Plaintiff **is** alleging that it had a property interest in the funds allegedly embezzled. Neither side has provided any sufficient discussion of California contractor or mechanics lien law sufficient to persuade the court on that question as a matter of law. But what is alleged,

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taken as true, is likely enough to survive a Rule 12(b)(6) attack. Were this a Rule 56 motion, the analysis might be different and presumably a more detailed analysis of California law on the question will be provided.

Plaintiff's opposition also argues that the elements of larceny are alleged in the Complaint, which provides another basis for having certain of Debtor's debts held nondischargeable under §523(a)(4). This is problematic because larceny is not specifically alleged in the Complaint, whereas embezzlement is. It could be argued that the elements of larceny can be intuited from the allegations in the Complaint, but that is not the test. As already noted, this is problematic because it does not necessarily put Defendant on notice of what theories of liability he will need to defend against. The Complaint should be amended if Plaintiff wishes to pursue a cause of action based on a larceny theory.

C. Fourth Claim: Willful and Malicious Injury §523(a)(6)

Plaintiff's last claim for willful and malicious conversion under §523(a)(6) is sufficiently alleged. Demonstrating willfulness requires a showing that defendant intended to cause the injury and not merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62 (1998). Thus, debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of §523(a)(6)." *Id.* at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1145-46 (9th Cir. 2002); *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("the willful injury requirement of § 523(a)(6) is met when it is shown either that debtor had subjective motive to inflict injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct").

The law in the Ninth Circuit defines a malicious injury as one involving "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. *Su*, 290 F.3d at 1146-47.

Here, as discussed above, Plaintiff's Complaint contains numerous factual allegations that, taken as true and viewed in the light most favorable to it as the nonmovant, would seem to meet the definition of willful and

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malicious. Plaintiff concedes that it does not have all the facts yet, but the court expects such facts to be produced during discovery, after which time, the analysis might be very different.

Debtor argues that leave to amend should not be granted because amendment would be futile and there can be no relation-back of amendments as is sometimes permitted under Fed. R. Civ. P. 15(c). This rule states in pertinent part:

"(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading[.]"

Here, Debtor argues that the applicable statute of limitations regarding the §523(a)(2)(A) claim has expired, making amendment futile. However, Debtor does not identify the specific statute to which he refers. As it is his burden to show that amendment would be futile, this burden is not carried. Plaintiff asserts that the basic facts as set forth in the Complaint are unlikely to change. Plaintiff argues that it is only the specifics, such as the identity of the person who committed the alleged forgery, that require further investigation. Thus, any amendment would relate back to the original conduct, transaction or occurrence originally set forth in the Complaint. Plaintiff is likely correct. In any case, there is a well-known directive in the Ninth Circuit that great liberality is to be applied with respect to amendments of pleadings in order to fulfill the overarching policy goal of deciding cases on their merits. Plaintiff should be allowed to amend the Complaint to supplement certain facts as they become known and to add a specific cause of action for larceny if it so chooses.

Finally, the caption in the Complaint suggests that there are theories for denying Debtor's discharge under 11 U.S.C. §727. However, how any of those subsections make up any part of the alleged claims for relief is left

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unclear. This is rather confusing, and the court seeks clarification from Plaintiff.

Overrule except that if larceny is to be included as part of the second claim, 30 days leave to amend is granted, and clarification on whether §727 is implicated is required.

Party Information

Debtor(s):

Travis J. Herigon

Represented By
Steven B Lever

Defendant(s):

Travis J. Herigon

Represented By
Michael G Spector

Plaintiff(s):

Superior Paving Company, Inc.

Represented By
David A Tilem

Trustee(s):

Thomas H Casey (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

#10.00 STATUS CONFERENCE RE: Complaint for: (1) Breach Of Contract; (2) Open Book Account; (3) Quantum Meruit
(con't from 5-13-21 per order approving stip. to cont. s/c & mtn to dismiss adversary proceeding entered 4-13-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 7-21-21**

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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8:19-10158 BP Fisher Law Group, LLP

Chapter 11

Adv#: 8:19-01064 BP Fisher Law Group, LLP v. Carrington Mortgage Services, LLC

**#11.00 Motion to Dismiss Adversary Proceeding 12(b)(6)
(con't from 5-13-21 per order approving stip. to cont. s/c & mtn to dismiss
adversary proceeding entered 4-13-21)**

Docket 3

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND MOTION TO DISMISS ADVERSARY
PROCEEDING ENTERED 7-21-21**

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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#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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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:

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Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, August 17, 2021

Hearing Room 5B

10:00 AM

CONT...

Chapter

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: <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:

- NONE LISTED -

8/16/2021 3:26:17 PM

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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 17, 2021

Hearing Room 5B

10:00 AM
CONT...

Chapter

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

Tuesday, August 17, 2021

Hearing Room

5B

10:00 AM

8:20-11631 Hoan Dang and Diana Hongkham Dang

Chapter 7

**#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY
(cont'd from 8-03-21)**

**1ST UNITED SERVICES CREDIT UNION
Vs
DEBTORS**

Docket 234

Tentative Ruling:

Tentative for 8/17/21:
Grant. Appearance: optional

Tentative for 8/3/21:
Grant. Appearance: optional

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

Trustee(s):

Karen S Naylor (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Tuesday, August 17, 2021

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10:00 AM

CONT...

Hoan Dang and Diana Hongkham Dang

Nathan F Smith

Arturo Cisneros

James C Bastian Jr

Chapter 7

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

Tuesday, August 17, 2021

Hearing Room 5B

10:00 AM

8:21-11675 Tony Outhai Phabs

Chapter 7

#2.00 Motion for relief from the automatic stay REAL PROPERTY

**BAY-VALLEY MORTGAGE GROUP
Vs
DEBTOR**

Docket 22

Tentative Ruling:

Tentative for 8/17/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Tony Outhai Phabs

Represented By
Stephen L Burton

Movant(s):

Bay-Valley Mortgage Group

Represented By
Daniel I Singer

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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

Tuesday, August 17, 2021

Hearing Room 5B

10:00 AM

8:21-11801 Durwin Julius Keck and Beverlee Gail Keck

Chapter 13

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

Docket 17

Tentative Ruling:

Tentative for 8/17/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Durwin Julius Keck

Represented By
Anerio V Altman

Joint Debtor(s):

Beverlee Gail Keck

Represented By
Anerio V Altman

Movant(s):

Durwin Julius Keck

Represented By
Anerio V Altman

Beverlee Gail Keck

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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<https://cacb.zoomgov.com/j/1607669512>

ZoomGov meeting number: 160 766 9512

Password: 744405

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM
CONT...

Chapter

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: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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

Wednesday, August 18, 2021

Hearing Room 5B

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Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:20-12166 Stephen F. Sturm

Chapter 13

**#1.00 Confirmation Of Chapter 13 Plan
(cont'd from 5-19-21)**

Docket 2

Tentative Ruling:

Tentative for 8/18/21:
Status on secured claim?

Tentative for 5/19/21:
It would seem a further continuance is in order in view of Mr. Cook's illness.
How long should the confirmation be postponed? What is the issue about
debtor's counsel holding the mortgage payments?

Tentative for 4/14/21:
Continue to May 19, 2021 @ 1:30PM to accommodate mediation.

Tentative for 1/20/21:
See #27. There remains a fundamental, unanswered question. Does Cook
have a secured claim and do the promised payments equal that interest in
present value terms. The parties should consider mediation to resolve this.
Continue.

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

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

CONT... Stephen F. Sturm

Chapter 13

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

Trustee(s):

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 18, 2021

Hearing Room 5B

1:30 PM

8:21-10943 Marina Leonidovna Weahunt

Chapter 13

**#2.00 Confirmation Of Chapter 13 Plan
(cont'd from 7-28-21)**

Docket 2

Tentative Ruling:

Tentative for 8/18/21:
See #27.

Tentative for 6/16/21:
Continue to July 28, 2021 for claims bar and in meantime the plan should be reformed to deal with BMW's point about full valued of collateral as a § 1325(a)(5) 'hanging paragraph' issue.

Party Information

Debtor(s):

Marina Leonidovna Weahunt

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, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11011 Fernan Edgardo Lozano

Chapter 13

**#3.00 Confirmation Of Chapter 13 Plan
(cont'd from 7-28-21)**

Docket 2

Tentative Ruling:

Tentative for 7/28/21:
Trustee's comments must be addressed.

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, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11076 Leticia Nedeau

Chapter 13

**#4.00 Confirmation Of Amended Chapter 13 Plan
(cont'd from 7-28-21)**

Docket 18

Tentative Ruling:

Tentative for 8/18/21:

Trustee's comments must be addressed. How can we confirm without addressing the IRS \$107,000+ secured claim?

Tentative for 7/28/21:

Trustee's objections must be addressed.

Party Information

Debtor(s):

Leticia Nedeau

Represented By
Trang Phuong Nguyen

Movant(s):

Leticia Nedeau

Represented By
Trang Phuong 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 18, 2021

Hearing Room 5B

1:30 PM

8:21-11112 Robert W Castillo and Cynthia L Castillo

Chapter 13

**#5.00 Confirmation Of The Amended Chapter 13 Plan
(cont'd from 7-28-21)**

Docket 14

Tentative Ruling:

Tentative for 8/18/21:
Missing payment? Interlineate at 100%?

Tentative for 7/28/21:
Confirm on terms suggested by trustee.

Party Information

Debtor(s):

Robert W Castillo

Represented By
Julie J Villalobos

Joint Debtor(s):

Cynthia L Castillo

Represented By
Julie J Villalobos

Movant(s):

Robert W Castillo

Represented By
Julie J Villalobos

Cynthia L Castillo

Represented By
Julie J Villalobos

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11140 Enrique Martinez

Chapter 13

**#6.00 Confirmation Of Chapter 13 Plan
(cont'd from 7-28-21)**

Docket 2

Tentative Ruling:

Tentative for 7/28/21:
Trustee's and Ajax's points must be addressed.

Party Information

Debtor(s):

Enrique Martinez

Represented By
Richard L. Sturdevant

Movant(s):

Enrique Martinez

Represented By
Richard L. Sturdevant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11365 Lawrence Aguilar, Jr and Susana Cruz Aguilar

Chapter 13

#7.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lawrence Aguilar Jr

Represented By
Kevin Tang

Joint Debtor(s):

Susana Cruz Aguilar

Represented By
Kevin Tang

Movant(s):

Lawrence Aguilar Jr

Represented By
Kevin Tang

Susana Cruz Aguilar

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, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11378 Regidor C. Aquino and Amanda Lane Aquino

Chapter 13

#8.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regidor C. Aquino

Represented By
Anthony B Vigil

Joint Debtor(s):

Amanda Lane Aquino

Represented By
Anthony B Vigil

Movant(s):

Regidor C. Aquino

Represented By
Anthony B Vigil
Anthony B Vigil

Amanda Lane Aquino

Represented By
Anthony B Vigil

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11384 Dianne Dobson-Sojka

Chapter 13

#9.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE
SCHEDULES, STATEMENTS AND/OR PLAN ENTERED 7-14-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dianne Dobson-Sojka

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 18, 2021

Hearing Room 5B

1:30 PM

8:21-11397 Kelly Maureen Levine and Magnum Floyd Levine

Chapter 13

#10.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

Tentative for 8/18/21:

According to the trustee's papers, there appears to be an issue over a disputed \$380 monthly housing expense. Unless debtors are entitled to this expense it looks like creditors are entitled to obtain about twice the recovery under projected disposable income. Status?

Party Information

Debtor(s):

Kelly Maureen Levine

Represented By
Marc A Goldbach

Joint Debtor(s):

Magnum Floyd Levine

Represented By
Marc A Goldbach

Movant(s):

Kelly Maureen Levine

Represented By
Marc A Goldbach
Marc A Goldbach

Magnum Floyd Levine

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, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11409 Luther E Secrest

Chapter 13

#11.00 Confirmation Of Chapter 13 Plan

Docket 12

Tentative Ruling:

Tentative for 8/18/21:

Two monthly payments in arrears, already? \$129,000 creditor Callahan Thompson claim omitted? Curing such a large arrearage on home residence appears dubious. Is debtor going to reform this plan?

Party Information

Debtor(s):

Luther E Secrest

Represented By
Michael D Franco

Movant(s):

Luther E Secrest

Represented By
Michael D Franco
Michael D Franco
Michael D Franco
Michael D Franco
Michael D Franco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11489 Durwin Julius Keck and Beverlee Gail Keck

Chapter 13

#12.00 Confirmation Of Chapter 13 Plan

Docket 0

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 6-30-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Durwin Julius Keck

Represented By
Anerio V Altman

Joint Debtor(s):

Beverlee Gail Keck

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11526 Timothy J. Neuman

Chapter 13

#13.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy J. Neuman

Represented By
Joseph A Weber

Movant(s):

Timothy J. Neuman

Represented By
Joseph A Weber

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11537 Raquel Mendoza Marquez

Chapter 13

#14.00 Confirmation Of Chapter 13 Plan

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raquel Mendoza Marquez

Represented By
Stephen S Smyth

Movant(s):

Raquel Mendoza Marquez

Represented By
Stephen S Smyth

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 18, 2021

Hearing Room 5B

1:30 PM

8:21-11581 Tiffany Michelle Freeman

Chapter 13

#15.00 Confirmation Of Chapter 13 Plan

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tiffany Michelle Freeman

Represented By
Sara E Razavi

Movant(s):

Tiffany Michelle Freeman

Represented By
Sara E Razavi

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 18, 2021

Hearing Room

5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

**#16.00 Motion Under Local Bankruptcy Rule 3015-1 (n) And (w) To Modify Plan Or Suspend Plan Payments
(cont'd from 7-28-21)**

Docket 68

Tentative Ruling:

Tentative for 8/18/21:
See ## 17 and 18.

Tentative for 7/28/21:
The objections of Ascentium and the trustee are both well taken. Of paramount concern is the best interest of creditors' test. It appears that there may be equity sufficient to pay creditors in full from the residence, but no argument is given why a plan allowing a discount should be confirmed notwithstanding. Debtor asserts without any authority cited that the best interest test is timed as of the petition date, not the modification date. A dubious theory in the court's view. Of similar concern is the proposed absence of tax refunds, made even more problematic given the missing return. "TBD" for creditor recovery is not adequate under these circumstances.

Deny

Tentative for 5/19/21:
Several serious issues are raised as mentioned by both the Trustee and Ascentium. Why should the debtors be excused from turning over tax refunds when they do not propose 100% payment?

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 18, 2021

Hearing Room 5B

3:00 PM

CONT... David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

Debtor(s):

David Wayne Horstman

Represented By
Michael Jones
Sara Tidd

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, August 18, 2021

Hearing Room 5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

#17.00 Motion for Hardship Discharge under 11 USC 1328(b) and Debtors' Certification of Compliance with 11 USC 1328

Docket 79

Tentative Ruling:

Tentative for 8/18/21:

This tentative should be read together with #18. These are, respectively, a motion for hardship discharge (§1328(b)) and to modify the confirmed plan (§1329). Both motions run into the same problem, i.e., that there is a fundamental dispute over the value of the residence. Debtors contend the value is around \$600,000 as appears on the original schedules from 2016. A more recent "drive-by" appraisal suggests the value is closer to \$850,000. No persuasive evidence is offered either way, but neither motion can succeed unless the court is persuaded that creditors are getting at least what would be received in Chapter 7. Under debtors' numbers the arithmetic suggests little or no recovery after homestead and costs of liquidation; but under the creditor's numbers it would receive payment in full or nearly so. Although not plainly stated, it would seem that debtors are proceeding (at least in the modification motion) on the dubious assumption that the value as of the petition date on this question should govern. No authority is given but the court finds it implausible. At least under the hardship discharge motion there is a more debtor-friendly argument as to the date of the valuation for purposes of determining "effective date" of the plan for comparison purposes. But the burden certainly lies with debtors to prove all the elements for confirmation, including §1325(a)(4), the so-called "best interests" test and that burden is not carried here on either motion. This is before the court even gets to the alleged unilateral diversion of tax refunds over the past few years. This court does not regard asking forgiveness to be a superior strategy to asking permission, at least not in a Chapter 13 context. Absent other evidence or developments, DENY.

Party Information

Debtor(s):

David Wayne Horstman

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
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Wednesday, August 18, 2021

Hearing Room 5B

3:00 PM

CONT... David Wayne Horstman and Judy Rosemary Horstman
Michael Jones
Sara Tidd

Chapter 13

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

3:00 PM

8:16-12742 David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

**#18.00 Trustee's Motion To Dismiss Case Due To Material Default Of A Plan Provision
(cont'd from 5-19-21)
(cont'd from 7-28-21)**

Docket 59

Tentative Ruling:

Tentative for 8/18/21:
See #17.

Tentative for 7/28/21:
See #19.

Tentative for 5/19/21:
See #17.1

Tentative for 4/14/21:
Is this moot depending on result of modification motion filed March 9?

Tentative for 3/17/21:
Grant unless feasibility issue cured or modification motion on file.

Party Information

Debtor(s):

David Wayne Horstman

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 18, 2021

Hearing Room 5B

3:00 PM

CONT... David Wayne Horstman and Judy Rosemary Horstman

Chapter 13

Joint Debtor(s):

Judy Rosemary Horstman

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Wednesday, August 18, 2021

Hearing Room 5B

3:00 PM

8:18-11129 Elvin Lorenzana and Somer Asako Shimada

Chapter 13

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

Docket 100

Tentative Ruling:

Tentative for 8/18/21:
Grant absent 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, August 18, 2021

Hearing Room 5B

3:00 PM

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

Chapter 13

#20.00 OSC Re Contempt And Damages, Including Punitive Damages, For Violation Of The Stay Is Issued Re: Motion For Order Declaring Michael J. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 1987 And Stephan Andranian In Violation Of The Automatic Stay Pursuant To 11 U.S.C. §362; Enjoining Prosecution Of Complaint In Arbitration; And For An Order To Show Cause Re: Contempt Against Michael R. Kaplan, An Individual And As Trustee Of The Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 187 And Stephan Andranian For Violating The Automatic Stay
**(osc set from hrg held on 2-17-21 re: motion)
(cont'd from 5-19-21 per order approving stip. to cont. osc entered 4-16-21)
(re-scheduled from 7-21-21 per court own mtn)**

Docket 127

***** VACATED *** REASON: CONTINUED TO 10-19-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON ORDER TO SHOW CAUSE RE: CONTEMPT AND DAMAGES,
INCLUDING PUNITIVE DAMAGES, FOR VIOLATION OF THE
AUTOMATIC STAY ENTERED 7-27-21**

Tentative Ruling:

Tentative for 2/17/21:

This is debtors, James and Kathleen Caringella's ("Debtors") motion for an order declaring Michael Kaplan, in his individual capacity and as trustee of the Michael R. Kaplan Revocable Inter Vivos Trust Dated May 26, 1987 ("Kaplan"), and Kaplan's counsel, Stephen Andranian ("Andranian"), in violation of the automatic stay of 11 U.S.C. §362. The motion also seeks to enjoin prosecution of a complaint in arbitration. Finally, the motion seeks an order to show cause why Kaplan and Andranian should not be held in contempt. The motion is opposed by both Kaplan and Andranian (collectively "Opponents").

1. Factual Background

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James G. Caringella and Kathleen J. Caringella

Chapter 13

The somewhat serpentine facts of this case are reported by Debtors as follows:

Debtors filed a voluntary petition under chapter 13 on November 20, 2018. On November 23, 2018, the Clerk of the Bankruptcy Court caused written notice of the filing and of the automatic stay to be noticed to all interested parties, including Opponents. Several years earlier, on January 22, 2016, Kaplan filed a Complaint in the Orange County Superior Court, Case No. 30-2016-00831667-CU-BC-CJC (the "Kaplan State Court Action") against Debtor James G. Caringella and his son, alleging claims for assault, battery and false imprisonment. Kaplan also attempted to allege claims for breach of fiduciary and fraud based on his contention that Debtor: (1) had used his position at Field Time Target & Training, LLC ("Field Time"), a California limited liability company 80% owned by Kaplan and 20% owned by Debtor, for his own personal benefit by reimbursing himself for personal items for his and his family's use; (2) had charged gasoline for personal reasons on the company credit card; (3) had improperly registered trademarks belonging to Field Time in his own name; (4) had made statements regarding Field Time's financial condition "through various reports and financial statements" that were false; and (5) had opened "secret bank accounts" and taken money from Field Time without Kaplan's knowledge or permission.

Less than a month later, on February 16, 2016, Kaplan, as the controlling member of Field Time, caused Field Time to file a separate state court action against Debtor and his family members, alleging the same claims based on the same facts for breach of fiduciary duty and fraud, Orange County Superior Court Case No. 30-2016-00835665-CU-BC-CJC (the "Field Time State Court Action"). Specifically, Field Time alleged that Debtor: (1) mismanaged Field Time; (2) stole Field Time property; (3) made representations "through various reports and financial statements" regarding Field Time's financial condition and business expenses that were false; (4) opened "secret bank accounts" without Kaplan's permission or knowledge; (5) registered trademarks in his own name; and (6) charged gasoline for personal reasons on the company credit card.

On November 20, 2018, the same date the bankruptcy petition was

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filed, Kaplan obtained a default judgment against Debtor in the Kaplan State Court Action in the amount of \$100,353.93, based solely on his claims for assault, battery and false imprisonment. At the time, Debtor had been abandoned by his personal attorney due to a personal tragedy involving the attorney's stepson. Debtor was allegedly unaware the default judgment had been entered. On November 20, 2018, Field Time also obtained a default judgment against Debtor in the Field Time State Court Action based on its claims that Debtor: (a) had converted Field Time's property for his own personal use; (b) had removed Field Time records and bank information, had failed to turn over passwords and other information, and had opened "secret" bank accounts; and (c) improperly had charged gasoline on a company credit card that he used for his personal and family use.

On January 2, 2019, Kaplan and Field Time each filed Proofs of Claim in this Court. Kaplan's Proof of Claim is in the amount of \$100,353.93, based exclusively on the Default Judgment he obtained against Debtor in the Kaplan State Court Action. Kaplan has apparently never amended his Proof of Claim. Field Time's Proof of Claim is in the amount of \$101,695.98, based exclusively on the Default Judgment it obtained in the Field Time State Court Action.

On June 12, 2019, this Court entered an Order Granting Relief from Automatic Stay Pursuant to Stipulation. The Order provides, in relevant part, as follows:

IT IS HEREBY ORDERED THAT the validity and amount of Claim No. 6-1 filed by Michael Kaplan will be determined through the adjudication of that certain case now pending in the California Superior Court for the County of Orange, Case No. 30-2016-00831677-CU-BC-CJC, styled Michael R. Kaplan, an individual and as trustee of the Michael R. Kaplan Revocable Intervivos Trust dated May 26, 1987 v. James G. Caringella and Craig Caringella (the "Kaplan Action").

IT IS FURTHER ORDERED THAT the validity and amount of Claim No. 7-1 filed by Field Time Target and Training LLC will be determined through the adjudication of that certain case now pending in the California Superior Court for the County of Orange, Case No.

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James G. Caringella and Kathleen J. Caringella

Chapter 13

30-2016-00835665-CU-BC-CJC, styled Field Time Target & Training, LLC v. James G. Caringella, etc. et.al. (the "Field Time Action").

IT IS FURTHER ORDERED THAT the automatic stay under the United States Bankruptcy Code, 11 U.S.C. Section 362(a) is terminated as to the Debtors and the Debtors' bankruptcy estate with respect to the Kaplan Action and the Field Time Action.

IT IS FURTHER ORDERED THAT Kaplan and Field Time may proceed in their respective Actions in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law. Kaplan and Field Time are directed to request that the State Court make sufficient finding for this Court to base a determination of the dischargeability of Kaplan and Field Time's respective claims.

Debtor obtained relief from the default judgment entered against him in the Field Time State Court Action on January 11, 2019. Field Time then proceeded to actively litigate the claims on which its default judgment was based. Thereafter, in the face of a subpoena Debtor served on Field Time's CPA to obtain its financial records, Kaplan caused Field Time to dismiss the Field Time Action on October 21, 2019. On January 20, 2020, Kaplan caused Field Time to withdraw its Proof of Claim in the Bankruptcy Court. Debtor also obtained an Order setting aside the Default Judgment obtained by Kaplan in the Kaplan State Court Action on January 24, 2020. Kaplan therefore had the right to again pursue those claims on which the Default Judgment was based, i.e., his First, Second and Third Causes of Action for assault, battery and false imprisonment. By this time, Field Time was actively litigating the claims for breach of fiduciary and fraud in the Field Time State Court Action, which is the subject of its own Proof of Claim.

Kaplan thereafter moved the State Court to compel arbitration of his claims, and those asserted by Debtor in his Cross-Complaint filed on February 13, 2020, which the State Court granted on July 13, 2020. After the State Court granted his motion to compel arbitration, on July 13, 2020, Kaplan filed his Complaint in Arbitration with Judicial Arbitration and

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Mediation Service in Orange, California. Kaplan mailed the Complaint in Arbitration to Debtor's attorneys for the first time on August 31, 2020. The Complaint in Arbitration does not contain any of the claims on which Kaplan's Proof of Claim or default judgment are based, to wit, his assault, battery and false imprisonment claims. Instead, Kaplan alleges the same claims that Field Time had alleged in its Complaint in the Field Time State Court Action, along with new equitable claims seeking dissolution of Field Time and an order requiring Debtor to sell to Kaplan his interest in Field Time. Debtor filed a Motion to Dismiss the Complaint in Arbitration in the Orange County Superior Court on October 5, 2020, based in part on the fact that Kaplan's claims violated the automatic stay in bankruptcy. Specifically, Debtor argued in his motion that Kaplan was barred from asserting derivatively the very same claims that are the subject of Field Time's dismissed Superior Court action and withdrawn Proof of Claim. Debtor further argued that this Court's Order for Relief from Stay limited Kaplan to litigating the claims reflected in his Proof of Claim, which consist solely of his claims for assault, battery and false imprisonment. Kaplan has never sought or obtained relief from stay to pursue any other claims against Debtor. On December 4, 2020, the Superior Court entered its Order denying Debtor's Motion without reaching the merits. The Superior Court found that it could not consider Debtor's Motion, due to the stay it had previously granted when it issued its order compelling arbitration of Kaplan's claims. Debtor believes he has no recourse but to seek relief directly from this Court.

2. Legal Authority

Pursuant to 11 U.S.C. 362(a), the filing of a bankruptcy petition operates as an automatic stay as to:

- (1) The commencement or continuation, including the issuance and employment of process, of a judicial, administrative or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the

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commencement of the case under this title . . .

Chapter 13

Orders for relief from stay are strictly construed. *In re Rader*, 488 B.R. 406, 413 (9th Cir. BAP 2013). An order granting relief from stay to permit a party to proceed to judgment in an action pending in state court is effective only as to claims: (1) actually pending in state court at the time the order modifying the stay is issued; or (2) that were expressly brought to the bankruptcy court's attention during the relief from stay proceedings. *In re Wardrobe*, 559 F.3d 932, 937 (9th Cir. 2009). A withdrawn claim is treated as a nullity, leaving the parties in the same position as if the claim had never been filed. *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995).

3. Was There A Violation of The Automatic Stay?

The short answer is probably, yes. Essentially, what Debtors are arguing is that the order for relief from stay is narrow in scope and should be narrowly construed to mean that Kaplan was only given leave to pursue his claims against Debtor, but not to pursue claims that likely belong to another entity, namely Field Time, especially since those claims were apparently withdrawn and Kaplan cannot claim any direct harm. By including Field Time's causes of action in the arbitration complaint, Debtors persuasively argue, Kaplan has violated the automatic stay by not seeking this court's authority to pursue those claims on his own behalf. Kaplan argues that the relief from stay order was intended to be broad in scope, and so the filing of an arbitration complaint incorporating Field Time's causes of action in state court could not reasonably be a violation of this court's order. Kaplan argues that the *Wardrobe* case relied on by Debtors is distinguishable because the rule as articulated in *Wardrobe* is to ensure that the parties know in advance what causes of action are covered by the relief from stay order. Kaplan asserts that the causes of action were known to both Debtors and this court because the order covered both Kaplan's and Field Time's causes of action. The court is not convinced. It seems obvious that even if the causes of action remain the same in name, if the identity of the plaintiff is changed, then it really is a new claim because the analysis of that claim will be different. Also, obviously, the defense strategy will be different based on the identity of the

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complainant. Thus, the court takes the view that exchanging claims even between related entities likely constitutes new causes of action for which relief from stay would, again, need to be sought so that every interested party is on notice of what the movant intends.

Kaplan concedes that there might be one new claim in the amended complaint that falls outside the relief from stay order by seeking to compel Debtor to perform his obligations under the terms of the operating agreement and turn over his 20% interest in the LLC. However, Kaplan argues that, while this claim may not have been previously asserted, this claim was by no means unknown to Debtors as it was part of Debtor's counterclaim, and so not really "new" within the meaning of the *Wardrobe* rule. Thus, Kaplan argues, there was no violation of automatic stay, and no injunctive or declaratory relief is warranted. In the court's view, this is a close call, but Debtors are probably correct that Kaplan violated the automatic stay by alleging a new cause of action arguably not contemplated, and therefore, not explicitly covered by the relief from stay order. The court takes a dim view of litigants taking too much license with its orders, especially since relief from stay orders are to be narrowly construed. At the very least, Kaplan must have known that by alleging a new cause of action, he was risking violating the relief from stay order. As Debtors point out, Kaplan should have sought either permission or clarification from this court before proceeding with its new claim against Debtor. See *Wardrobe*, 559 F.3d at 937 ("Furthermore, in the event that a previously unforeseen cause of action becomes apparent during a trial proceeding pursuant to an order granting relief from the automatic stay, numerous avenues of relief are available to a creditor to ensure that any resulting judgment does not violate the scope of the order. A creditor could petition the bankruptcy court for relief that is broad enough to encompass the cause of action; [or] could seek an order from the bankruptcy court clarifying the relief from stay order[.]")

Kaplan also argues that this motion is procedurally defective because, under FRBP 7001(7) injunctive relief is properly brought through an adversary proceeding, not by motion. Similarly, an action seeking declaratory relief is also to be brought by adversary proceeding pursuant to FRBP 7001(9). This ensures that the usual procedural safeguards are in place. Debtors argue that

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Chapter 13

this court has the power to grant the relief without an adversary proceeding under the broad authority of 11 U.S.C. §105(a). But §105 is not a free ranging charge to do equity. It is intended instead to implement powers or duties otherwise expressly stated in the Code. See *In re Hornsby*, 2013 WL 4200947 at *2 (Bankr. E.D. Cal. 2013) citing *In re Lloyd*, 37 F.3d 271, 275 (7th Cir. 1994) ("While Congress ensured that there was a statutory basis for the bankruptcy and district court judges having the authority to issue all orders necessary and proper to carry out the Bankruptcy Code, 11 U.S.C. § 105(a) is not the grant of a free ranging authority to do whatever the judge thinks should be right."). See also *Law v. Siegel*, 571 U.S. 415, 421 (2014) citing 2 Collier on Bankruptcy ¶105.01[2], p. 105-6 (16th ed. 2013) ("It is hornbook law that §105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'"); *American Hardwoods, Inc. v. Deutsche Credit Corporation (In re American Hardwoods, Inc.)* 885 F.2d 621 (9th Cir. 1989) ("While endowing the court with general equitable powers, section 105 does not authorize relief inconsistent with more specific law.") The court sees no reason to deviate from the rules of bankruptcy procedure. The motion also seeks an order to show cause why Kaplan and Andranian should not be held in contempt for violating the stay order and here, the court is persuaded that such relief may be warranted.

Thus, declaratory and injunctive relief will be denied as procedurally improper, but the request for an order to show cause why Kaplan and Andranian should not be held in contempt for violating this court's relief from stay orders will be granted.

The court admonishes the parties to take a step back and approach these issues practically. This court is not likely to undertake resolution of matters by litigation that are already the subject of state court proceedings. Nor is this court likely to issue orders that have a practical effect of undercutting the Superior Court's interpretations of state law, as for example may be implicated by a court's order compelling arbitration. Further, this is a Chapter 13. By definition the resources are limited, and it makes little sense to accrue a large administrative fee that would jeopardize the success of any plan. Should the court order these matters to mediation? The court will hear

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argument on that last point.

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*Deny declaratory and injunctive relief as procedurally improper. Issue
OSC re violation of the stay.*

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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8:19-11329 Charles Ryan Prince and Vicky Priscilla Preston

Chapter 13

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

Docket 58

Tentative Ruling:

Tentative for 8/18/21:

Grant absent current status or modification motion on file.

Party Information

Debtor(s):

Charles Ryan Prince

Represented By
Barry E Borowitz

Joint Debtor(s):

Vicky Priscilla Preston

Represented By
Barry E Borowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-11810 Helen Ojeda

Chapter 13

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

Docket 68

Tentative Ruling:

Tentative for 8/18/21:
Continue to allow hearing on modification filed August 11.

Party Information

Debtor(s):

Helen Ojeda

Represented By
Anerio V Altman

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-14502 Andy T. Torres

Chapter 13

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

Docket 99

Tentative Ruling:

Tentative for 8/18/21:

Grant absent current status or modification motion on file.

Party Information

Debtor(s):

Andy T. Torres

Represented By
Richard G Heston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:20-10655 Jose Magana

Chapter 13

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

Docket 45

Tentative Ruling:

Tentative for 8/18/21:

Grant absent successful objection which would bring into compliance or modification motion on file.

Party Information

Debtor(s):

Jose Magana

Represented By
Scott Dicus

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

8:20-10882 Craig A. Durfey and Sharon K. Durfey

Chapter 13

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

Docket 42

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 8-12-21**

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

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

8:20-10930 Roger Boose

Chapter 13

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

Docket 49

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF TRUSTEE'S MOTION FOR ORDER DISMISSING
CHAPTER 13 FILED 8-12-21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roger Boose

Represented By
Gary Polston

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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3:00 PM

8:20-11803 Khalid Sayed Ibrahim

Chapter 13

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

Docket 51

Tentative Ruling:

Tentative for 8/18/21:

Grant absent current status or modification motion on file.

Party Information

Debtor(s):

Khalid Sayed Ibrahim

Represented By
Christopher J Langley
Michael Smith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:21-10943 Marina Leonidovna Weahunt

Chapter 13

#27.00 Motion For Order Determining Value Of Collateral

Docket 25

Tentative Ruling:

Tentative for 8/18/21:

In this motion to value BMW's collateral, debtor suggests a retail value of \$8000 whereas BMW in opposition relies upon the Kelley Blue Book 's range of from \$11-14,000. But debtor's valuation is more persuasive since it relies at least in part on the fact that the vehicle is damaged, as supported with photographs.

In contrast, the creditor seems to rely only on the more generic range of values without any regard to diminution from the specific damage, which the court finds would reduce from the low end of the range.

Grant.

Party Information

Debtor(s):

Marina Leonidovna Weahunt

Represented By
Daniel King

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1616786838>

ZoomGov meeting number: 161 678 6838

Password: 550760

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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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: <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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11:00 AM

8:19-14912 Igor Shabanets

Chapter 7

#1.00 Creditor Remares Global, LLC's Motion for the Court to Reconsider or Modify its July 26, 2021 Order Authorizing Sale of Property

Docket 387

Tentative Ruling:

Tentative for 8/24/21:

This is creditor, Remares Global, LLC's ("Remares") Motion to Reconsider or Modify the July 26, 2021 Order Authorizing Sale of Property. The motion has drawn a limited opposition from the chapter 7 trustee ("Trustee"). The motion is also opposed by creditor, Vibe Micro, Inc. ("Vibe Micro").

1. Background

The following is the background on the two adversary matters, the Settlement Motion, the Property Sale Motion, the Property Sale Order, and the Motion to Vacate.

A. Adversary No. 1

This adversary proceeding began as a fraudulent transfer action in state court to avoid Debtor, Igor Shabanets' ("Debtor") transfer of the property commonly referred to as 2 Monarch Cove, Dana Point, CA ("the Property") to Rock Star Beverly Hills, LLC. On February 27, 2020, Remares removed the Rock Star Case to this court. On July 8, 2020, the court granted Remares' motion to intervene into the Rock Star case. On July 9, 2020, Remares filed its Answer to Complaint and Counterclaim wherein it stated a claim for declaratory relief as to whether the Property transfer to Rock Star was "void *ab initio*," "void" or "voidable," and claimed a resulting trust.

B. Adversary No. 2

On May 8, 2020, Remares filed an adversary complaint against

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CONT... Igor Shabanets

Chapter 7

Trustee for declaratory relief regarding the validity, extent and priority of Remares' lien on the Property. On June 8, 2020, the Trustee filed his answer to the complaint.

C. Trustee's Settlement Motion

On September 23, 2020, the Trustee filed the Settlement Motion to approve the Settlement Agreement, which was entered into between the Trustee and Remares and Global Approach, Inc. ("Global") and which would resolve Adversary Nos. 1 & 2, and the issues of Remares' \$10,314,112. 97 and Global's \$4.5 million liens.

The Settlement Motion states in relevant part:

The Parties have reached an agreement to resolve their differences. Under the terms of the [Settlement] Agreement, the Trustee will avoid and recover the Monarch Property, obtain turnover, and sell it for the benefit of creditors. In exchange, Remares and Global will subordinate their claims as to the Monarch Property and transfer the portion of their respective Judgment Liens necessary to cover the costs of administration and sale relating to the Monarch Property as detailed below.

The Agreement also provides Remares' claimed judgment lien on the Property attaches to the sale proceeds, after payment of (i) ordinary and customary closing costs and escrow fees, (ii) all homeowner's fees through closing, (iii) the attorney's fees the Estate incurred related to avoiding the Property transfer, seeking turnover and effectuating a sale, (iv) 10% of the net proceeds up to \$250,000, (v) and certain repairs to the Property. Agreement pg. 3, § 3(a)-(t). Thereafter, Remares and Global shall retain the balance of their respective Judgment Liens. Settlement Motion, pg. 15, § 4(b). Thus, the Settlement Motion sought to resolve all issues regarding the Property's liens and how the Property's sale proceeds were to be distributed.

On October 14, 2020, Vibe Micro filed its objection ("Objection") to the Settlement Motion and argued Remares' judgment lien against the Property is invalid. On October 22, 2020, Remares filed a reply to Vibe Micro's objection wherein Remares argued it had a valid judgment and lien on the Property. On

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Igor Shabanets

Chapter 7

October 29, 2020, the Trustee also filed a response and stated it would proceed with the Settlement Motion unless the Court determined Remares' judgment lien was extinguished as a matter of law. On November 3, 2020, Debtor also filed an opposition to the Settlement Motion asserting the Property was not property of Debtor's bankruptcy estate. On December 1, 2020, the court entered its Settlement Order approving the Settlement Agreement. No party appealed the Settlement Order. No party filed a motion to vacate or modify the Settlement Order.

D. The Property Sale Motion

On June 15, 2021, the Trustee filed his Motion for Order Authorizing Sale of Real Property. On June 22, 2021, Vibe Micro filed its Limited Opposition to the Property Sale Motion. On June 23, 2021, Axos Bank also filed a limited opposition to the Property Sale Motion. On June 29, 2021, Remares filed its Reply to Vibe Micro's limited opposition to the Sale Motion. On July 6, 2021, the court heard the Sale Motion hearing.

E. The Motion to Vacate

On July 1, 2021, Vibe Micro filed its Motion to Vacate the Settlement Order. On July 1, 2021, Vibe Micro filed its RJN in support of its Motion to Vacate the Settlement Order. On July 13, 2021, Remares filed its opposition to Vibe Micro's Motion to Vacate. On July 20, 2021, Vibe Micro filed its Notice of Withdrawal of the Motion to Vacate.

F. The Court Enters the Property Sale Order

On July 26, 2021, the court entered the Property Sale Order granting the Sale Motion providing in paragraph 7 that "[a]ll other remaining disputed proceeds (i.e., 90% of the Net Proceeds, as defined in the settlement and subordination agreement, Dk. No. 177) shall be held by the Trustee pending further order of the Court authorizing such distributions."

G. The Sale Has Closed

On August 4, 2021, the sale of the Property closed. Funds have been distributed to Trustee, who is holding the 90% Net Proceeds in a segregated

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CONT... **Igor Shabanets**
account pending further court order.

Chapter 7

2. Should the Court Reconsider the Property Sale Order Under Rule 59(e)?

FRCP 59(e), made applicable in bankruptcy proceedings by FRBP 9023, allows a court to reconsider and amend a previous order, but provides an extraordinary remedy that should be used sparingly in the interests of finality and conservation of judicial resources. *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003), citing, 12 Moore's Federal Practice ¶ 59.30[4] (3d ed.2000). A motion for reconsideration under Rule 59(e) serves a narrow purpose, and should not be granted, absent highly unusual circumstances, unless the court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law. *Id.*, citing, *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). While Rule 59(e) allows a court to alter or amend a judgment, it "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486, n. 5 (2008) (internal citations omitted). Courts "[enjoy] considerable discretion in granting or denying" a motion to alter or amend judgment. *McIntosh v. N. Cal. Universal Enters.*, 2010 U.S. Dist. LEXIS 76611 (E.D. Cal. July 7, 2010) quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255, n. 1 (9th Cir. 1999). A FRCP 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation. *Id.*

FRCP 60(b) provides in relevant part: "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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(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."

Here, Remares contends reconsideration is warranted because the Property Sale Order is manifestly unjust in that the court has not considered Remares' *res judicata* argument solely because Vibe Micro unilaterally withdrew its Motion to Vacate. Remares asserts that if Vibe Micro had not withdrawn its Motion to Vacate, the court would have considered Remares' argument that Vibe Micro's objection to any disbursement of the sale proceeds to Remares is barred by *res judicata*. Additionally, Remares asserts there is newly discovered evidence showing that Vibe Micro never intended for this court to hear the Motion to Vacate. This new evidence that was allegedly previously unavailable is the timing of the withdrawal of the motion to vacate – after the hearing on the Sale Motion. In opposition to the motion, Vibe Micro argues that the court has already rejected Remares' contention that *res judicata* bars Vibe Micro's claim objection proceeding. This is not correct. This court stated in its adopted tentative ruling on the July 6, 2021 Sale Motion:

"Counter arguments about whether the compromise and subordination approved by the court must necessarily include distribution to Remares, or whether Vibe Micro has separate and timely standing to object, or whether there has been a *res judicata* determination after issues were litigated, must be decided via separate proceedings, such as perhaps Vibe Micro's Rule 60 motion. Proceeds are to be kept by the Trustee in trust pending resolution of these issues or further order."

Thus, the court did not reject Remares' *res judicata* arguments, but only deferred them for another day. Still, the court does not see what manifest injustice is resulting from the court's sale order. Remares will likely need to

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fully litigate the Vibe Micro claim objection, but the court does not see what is manifestly unjust about that. After all, Remares seems to tacitly admit that there is at least a possibility that its proof claim could be invalidated. In the court's view, it does not make much sense to prematurely allow Remares to take control of funds it may have to later return based on the result of the claim objection litigation. In its reply Remares argues that there is nothing premature about allowing Remares to obtain the funds it bargained for in the court approved Settlement Agreement. Remares argues that there is a substantive difference between obtaining its portion of the sale proceeds from the Settlement Agreement and obtaining it from its proof of claim. No authority is cited for this proposition. This argument is somewhat confusing because Remares' ultimate right to payment stems from its disputed domesticated judgment, which remains to be litigated. In Section II of the Settlement Agreement, paragraph 2, titled "Consent to Sale," states in relevant part,

"Remares and Global agree that the following liens and claims shall have priority over the Judgment Lien... *and any other lien which is determined by the Court to be valid and senior in priority to either the Remares Judgment Lien or the Global Judgment Lien.*" (Emphasis added)

The court has yet to determine the validity of Remares' judgment lien and its priority relative to Vibe Micro's as that litigation remains ongoing. Furthermore, this court has recently elected to abstain from significant portions of that litigation. The court is also not certain whether the portion of the sale proceeds Remares seeks to obtain through the Settlement Agreement and the proof of claim are different. In any case, Remares' manifest injustice argument does not persuade, at least not enough to disturb the sale order, and this court has already decided that the state court will be the forum for determining the bulk of Vibe Micro's claims, based as they are on arcane issues of California procedure.

Remares' argument that Vibe Micro's alleged bad faith withdrawal of its Motion to Vacate constitutes "new evidence" within the meaning of Rule 59 seems dubious. As a preliminary matter, it is not clear what the new evidence

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is beyond a change in litigation strategy. Remares takes remarks made by Vibe Micro at the hearing on Sale Motion to the effect that it had evidence of inequitable conduct on Remares' part that would support Vibe Micro's Motion to Vacate. Remares understandably takes the negative inference from Vibe Micro's withdrawal of its Motion to Vacate, but that is not the only inference that can be drawn. Vibe Micro persuasively argues that its withdrawal of the Motion to Vacate was not motivated by a bad faith desire to frustrate Remares but was withdrawn because the Sale Order mooted the need for Vibe Micro to pursue such a motion. Vibe Micro asserts that the provision in the Sale Order requiring the trustee to hold a certain amount of the sale proceeds in a segregated account pending adjudication of the adversary proceedings was exactly the outcome they sought, hence the withdrawal of the Motion to Vacate. Again, the court sees little in the record that contradicts this explanation despite Remares' assertions, and certainly nothing extraordinary enough to find that Vibe Micro has perpetrated a fraud on the court or engaged in misconduct warranting alteration of the sale order pursuant to Rule 60(b)(3). Rather tellingly, Remares does not cite any authority suggesting that simply withdrawing a motion constitutes a fraud on the court or misconduct. It is not beyond imagination that such conduct could be considered fraudulent or misconduct under the right circumstances, but the court does not see those circumstances obviously present here.

Finally, the court is familiar with Remares' argument regarding *res judicata* as it has been put forth in one form or another prior to this motion, including in Remares' objection to the Sale Order, which was overruled in favor of keeping the relevant portion of the sale order as originally lodged. However, the court did invite this motion in the Sale Order. The court stated at the end of the Sale Order:

"The court is aware of the dueling positions of Remares and Vibe Micro concerning the on again, off again positions of the lienholders toward the Settlement Agreement approved by the court and Remares' desire to get immediate distribution thereunder, now that Vibe Micro has withdrawn its motion to set aside (and arguably the reason for

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revisiting the distribution provisions). That dispute may be resolved in a new motion filed by either of the antagonists, but the court is not inclined to hold up the escrow over the distribution issue."

But this issue has moved along since the Sale Order, largely over how the disputed lien questions will be determined. The court has abstained from the bulk of it, so it makes little sense to short circuit that determination now or change the requirement that the disputed proceeds be held pending the determination.

Deny

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang

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Docket 0

Tentative Ruling:

- NONE LISTED -

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8:20-10143 Bridgemark Corporation

Chapter 11

**#1.00 Joint Objection of Bridgemark Corporation And Placentia Development Company, LLC Claims:
(con't from 8-04-21)**

Claim No. 17-1

Mary Jean Boyd Todd

Claim No. 19-1

Sheri C. Parks Trust

Claim No. 20-1

**Survivors Trust of Politiski Trust
(aka Plitiski Survivors Trust)**

Claim No. 21-1

Ridley J. Politiski

Claim No. 22-1

Michael P. Politiski

Claim No. 23-1

Marianne P. Covington

**Claim No. 24-1
Family Trust**

Richard And Karen Clements

**Claim No. 26-1
Revocable Trust**

The Catherine S. Chandler

Claim No. 27-1

D. McFarland Chandler Jr.

Claim No. 28-1

D. McFarland Chandler

Claim No. 29-1

Ethel Severson Living Trust

Claim No. 31-1

Robert Hall

Claim No. 32-1

John Kraemer

Claim No. 33-1

Christine Vetter Pate

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CONT... Bridgemark Corporation

Chapter 11

Claim No. 34-1

Susan Elizabeth Vetter

Claim No. 35-1

Laughlin E. Waters

Docket 478

***** VACATED *** REASON: CONTINUED TO 9-22-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE REGARDING OBJECTIONS TO ADMINISTRATIVE
EXPENSES REQUESTS ENTERED 8-24-21**

Tentative Ruling:

Tentative for 8/4/21:
See #5. Status?

Tentative for 7/28/21:

Sustain. The arguments of Mr. Kraemer, and by extension any others similarly situated, seem beside the point (or at least unclear) based on the court's understanding of events. The leases have all been assumed by prior order of this court and assigned to a buyer. No abridgment was made of rights thereunder. If rights exist for access to mineral rights holders and/or payment for extraction under those leases, and/or resistance to capping of wells, they remain so in the hands of the transferee. But the court is not inclined to get into advisory opinions on what might be triggered by future events and those disputes, if any, will be the domain of another court. The objectors allege that all monetary claims that might be characterized as administrative have already been paid, and thus claims for those sums disallowed. The court sees nothing to dispute that allegation.

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CONT... Bridgemark Corporation

Chapter 11

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Matthew J Pero

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8:20-10143 Bridgemark Corporation

Chapter 11

#2.00 Joint Motion For Order Confirming Joint Chapter 11 Plan of Liquidation Proposed by Bridgemark Corporation and Placentia Development Company, LLC, Dated as of June 30, 2021
(con't from 8-04-21)

Docket 501

Tentative Ruling:

Tentative for 8/25/21:

It would seem all obstacles to confirmation are now removed, in view of the stipulation regarding the four dissident administrative claims? Confirm.

Tentative for 8/4/21:

If the court is correctly informed, the only controversy as yet unresolved is the status of the four mineral rights licensor claims (see #6) and whether the closing and abandoning to be done under the plan (to be performed by the plan agent under the Liquidation Trust and appointed under the plan) constitutes a post-petition breach of the leases giving rise to a monetary administrative claim under §§503 and 507(a)(2). The court has seen nothing further on this point. This might not necessarily prevent confirmation at this time if the upper limit of the possible claims is financially provided for (with suitable assurances) under the plan, since the holders of allowed administrative claim are entitled to be paid in full, in cash as of the effective date of the plan under §1129(9). While the treatment of administrative claims under Article II ¶2.2 may provide some leeway on timing of payment, that is not paralleled by the code definition and requirements at §1129(a)(9)(B) and the plan definition of "effective date." For the court to confirm, among other things, must be proved the feasibility of the plan as provided under § 1129(a) (11). So, the bottom line is, can those mechanisms and assurances be given now or must plan confirmation await determination on the allowance issues?

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CONT... Bridgemark Corporation

Chapter 11

Tentative for 7/28/21:

Confirm. See #s 15 and 16 to be reflected in order.

Party Information

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel
Matthew J Pero

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8:20-10143 Bridgemark Corporation

Chapter 11

**#3.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 8-04-21)**

Docket 1

Tentative Ruling:

Tentative for 8/25/21:
See #2.

Tentative for 8/4/21:
See #s 5 and 6.

Tentative for 7/28/21:
See #s 14-16.

Tentative for 6/23/21:
Continue to adequacy of disclosure or confirmation hearing.

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:

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CONT... Bridgemark Corporation
See #16. Appearance: optional

Chapter 11

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

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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8:20-11611 AEPC Group, LLC

Chapter 11

#4.00 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 5-26-21)

Docket 6

Tentative Ruling:

Tentative for 8/25/21:

In view of the confirmation on July 14, is this now moot?

Tentative for 5/26/21:

Is this still an active issue? Status?

Tentative for 2/24/21:

Continue on same terms and conditions pending hearing on disclosure on March 3, 2021 @ 10:00 a.m.

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?

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CONT... AEPC Group, LLC

Chapter 11

Tentative for 6/10/20:
Per order, opposition due at hearing.

Party Information

Debtor(s):

AEPC Group, LLC

Represented By
Jeffrey S Shinbrot

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8:00-00000

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- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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Docket 0

Tentative Ruling:

- NONE LISTED -

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8:20-12871 Torrin Myles Rossi

Chapter 7

Adv#: 8:21-01004 Tang v. Rossi

**#1.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 USC Sections 523 (a)(2)(A), (a)(4), and (a)(6)
(cont'd from 5-13-21)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 8-20-21**

Tentative Ruling:

Tentative for 5/13/21:

Case is referred to mediation. Plaintiff to submit an order appointing selected mediator within ten days. One day of mediation to occur before August 13, 2021. Continued status hearing August 26, 2021 at 10:00 a.m., without prejudice to plaintiff's expected motion for summary judgement which may be self-calendared.

Party Information

Debtor(s):

Torrin Myles Rossi

Represented By
Ronald A Gorrie

Defendant(s):

Torrin Myles Rossi

Pro Se

Plaintiff(s):

Ke Tang

Represented By
Claudia Coleman
D Edward Hays

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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10:00 AM

8:21-10876 Travis J. Herigon

Chapter 7

Adv#: 8:21-01025 Superior Paving Company, Inc. v. Herigon

#2.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt And Right To Discharge [11 U.S.C. §523(a)(2), (4), (6), §727(a)(2), (3), (4), (5)]

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 10:00 A.M.
PER MOTION TO DISMISS ADVERSARY PROCEEDING HEARING
HELD ON 8-12-21 - SEE HEARING RESULT**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Travis J. Herigon

Represented By
Steven B Lever

Defendant(s):

Travis J. Herigon

Pro Se

Plaintiff(s):

Superior Paving Company, Inc.

Represented By
David A Tilem

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:14-14894 Randy L Stroops

Chapter 7

Adv#: 8:21-01026 Stroops v. U S Department of Education

#3.00 STATUS CONFERENCE Re: Complaint To Determine The Dischargeability Of Student Loan Debt As An Undue Hardship FRBP 7001(6) 63 Dischargeability - 523 (A)

Docket 1

Tentative Ruling:

Tentative for 8/26/21:

No status report was filed. It is not clear that the summons was served and no answer is on file. Status?

Appearance: required

Party Information

Debtor(s):

Randy L Stroops Pro Se

Defendant(s):

U S Department of Education Pro Se

Plaintiff(s):

Randy L Stroops Pro Se

Trustee(s):

Karen S Naylor (TR) Pro Se

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10:00 AM

8:19-12273 Eric Douglas Ford

Chapter 7

Adv#: 8:21-01029 Kosmala v. Ford

#4.00 STATUS CONFERENCE RE: Complaint: (1) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 548(a)(1)(A); (2) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 544(b) And CAL. CIV. CODE § 3439.04(a)(1); (3) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 548(a)(1)(B); (4) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 544(b) AND CAL. CIV CODE §§ 3439.04(a)(2) And 3439.05(a); (5) For Recovery Of Avoided Transfer Pursuant To 11 U.S.C. § 550; (6) To Preserve Transfer For The Benefit Of The Estate Pursuant To 11 U.S.C. § 551; (7) For Authorization To Sell Real Property In Which Co-Owner Holds Interest Pursuant To 11 U.S.C. § 363(h); (8) For Turnover Of Property Of The Estate Pursuant To 11 U.S.C. § 542; And (9) For Authorization To Pay Costs Of Sale Pursuant To 11 U.S.C. § 363(j)

Docket 1

Tentative Ruling:

Tentative for 8/26/21:

Continue status conference about 120 days. Send to mediation, which is to occur within that period. Status Conference continued to: January 6, 2022.

Appearance: required

Party Information

Debtor(s):

Eric Douglas Ford

Represented By
J Scott Williams

Defendant(s):

Joan Riley Ford

Pro Se

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden

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CONT... Eric Douglas Ford

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Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Erin P Moriarty

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8:21-10810 Kenneth C Guziak

Chapter 7

Adv#: 8:21-01030 Melhase v. Guziak

#5.00 STATUS CONFERENCE RE:Complaint Against Adversary Defendant Kenneth C. Guziak To Determine Non-Dischargeability Of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A)

Docket 1

Tentative Ruling:

Tentative for 8/26/21:

Deadline for completing discovery: January 31, 2022

Last date for filing pre-trial motions February 11, 2022.

Joint pre-trial order due per local rules.

Pretrial conference: February 24, 2022 @ 10:00AM

Appearance: required

Party Information

Debtor(s):

Kenneth C Guziak

Represented By
Darren G Smith

Defendant(s):

Kenneth C Guziak

Pro Se

Plaintiff(s):

Dan Melhase

Represented By
Jeffrey George Jacobs

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, August 26, 2021

Hearing Room 5B

10:00 AM

8:20-13070 Atanacia Contreras

Chapter 7

Adv#: 8:21-01031 Marshack v. Contreras-Harness

#6.00 STATUS CONFERENCE RE: Complaint To Avoid Fraudulent Transfer

Docket 1

Tentative Ruling:

Tentative for 8/26/21:

Deadline for completing discovery: October 31, 2021

Last date for filing pre-trial motions: November 29, 2021

Pre-trial conference on: December 9, 2021 @10:00AM

Joint pre-trial order due per local rules.

Appearance: required

Party Information

Debtor(s):

Atanacia Contreras

Represented By
Alessandro G Assanti

Defendant(s):

Otilia Contreras-Harness

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Donald W Sieveke

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke

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

Thursday, August 26, 2021

Hearing Room 5B

10:00 AM

8:21-10863 Nalu's Group, Inc.

Chapter 11

Adv#: 8:21-01041 Nalus, Inc. et al v. Cabrera

#7.00 STATUS CONFERENCE RE: Notice of Removal

Docket 1

Tentative Ruling:

Tentative for 8/26/21:

This is a straightforward state law claim which ought normally to be decided in Superior Court, but there is a wrinkle in that the confirmed plan reportedly has a third party release provision, allegedly agreed to by the affected class. That issue should be decided in this court via Rule 56 motion. The court requires briefing on the enforceability of such provisions in Ninth Circuit. Continue status conference about 90 days for such a motion to be briefed and heard.

Party Information

Debtor(s):

Nalu's Group, Inc.

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Faustino Perez Cabrera

Pro Se

Plaintiff(s):

Nalus, Inc.

Represented By
Michael Jones

Anthony Truong

Represented By
Michael Jones

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**

Thursday, August 26, 2021

Hearing Room 5B

10:00 AM

8:12-10105 Walldesign, Inc., a subchapter S corporation

Chapter 11

**#8.00 CONT Scheduling And Case Management Conference
(cont'd from 4-07-21)**

[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 8/26/21:

Status? The court was under the impression that a final decree would be sought soon.

Tentative for 4/7/21:

Continue for (one presumes) final status conference August 26, 2021. The court looks forward to a motion for final decree and closing the case at approximately this time.

Tentative for 1/6/21:

Continue for further conference April 7, 2021 @ 10:00AM. Further status report due ten days in advance. Appearance: optional

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?

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

Thursday, August 26, 2021

Hearing Room 5B

10:00 AM

CONT... Walldesign, Inc., a subchapter S corporation

Chapter 11

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):

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
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 26, 2021

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

#9.00 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 1-14-21 per order granting stip. to cont. pre-trial hrg entered 1-13-21)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-24-22 AT 10:00 A.M.
PER ORDER PURSUANT TO STIPULATION TO CONTINUE PRETRIAL
HEARING ENTERED 8-16-21**

Tentative Ruling:

Tentative for 1/14/21:
Status? Appearance: required

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

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

Thursday, August 26, 2021

Hearing Room 5B

10:00 AM

CONT... James G. Caringella

Chapter 13

Kathleen J. Caringella

Pro Se

Joint Debtor(s):

Kathleen J. Caringella

Represented By
Kelly H. Zinser

Plaintiff(s):

Michael Kaplan

Represented By
Adam M Greely

Field Time Target & Training LLC

Represented By
Adam M Greely

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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

Thursday, August 26, 2021

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

#10.00 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 7-15-21 per order approving stip to con't entered 6-29-21)

Docket 1

Tentative Ruling:

Tentative for 8/26/21:
Status?

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
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, August 26, 2021

Hearing Room

5B

10:00 AM

8:20-11517 Boyu Liu

Chapter 7

Adv#: 8:20-01129 FS Hawaii Inc v. Liu

- #11.00** PRE-TRIAL 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 **(set from s/c hrg held on 12-03-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-26-21 AT 10:00 A.M.
PER ORDER DENYING MOTION FOR ORDER STAYING DISCOVERY
PENDING COMPLETION OF COURT & CONITINUING PRE-TRIAL
CONFERENCE ENTERED 5-06-21**

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

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

Thursday, August 26, 2021

Hearing Room 5B

10:00 AM

CONT... Boyu Liu

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, August 26, 2021

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01155 Marshack v. Saiya Holdings, LLC

#12.00 PRE-TRIAL CONFERENCE RE: Complaint For: 1) Avoidance of Unauthorized Post-Petition Transfer; 2) Recovery of Avoided Transfer; 3) Turnover of Property of the Estate; 4) Declaratory Relief; 5) Quiet Title; and 6) Injunctive Relief
Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(14 (Recovery of money/property - other)),(72 (Injunctive relief - other))
(set from s/c hrg held 1-28-21)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER ON
STIPULATION TO DISMISS COMPLAINT WITH PREJUDICE AND
VACATE PRE-TRIAL CONFERENCE ENTERED 6-11-21**

Tentative Ruling:

Tentative for 1/28/21:
Deadline for completing discovery: July 1, 2021
Last date for filing pre-trial motions: July 23, 2021
Pre-trial conference on: August 26, 2021
Joint pre-trial order due per local rules.

Appearance: required

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Saiya Holdings, LLC

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

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

Thursday, August 26, 2021

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

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

Thursday, August 26, 2021

Hearing Room 5B

11:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

#13.00 PRE-TRIAL 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) (set from s/c hrg held on 8-13-20) (cont'd from 4-22-21)

Docket 1

Tentative Ruling:

Tentative for 8/26/21:
Set trial after continued Pretrial Conference in about 90 days.

Tentative for 4/22/21:
Continue to July 29 @ 11:00 a.m.

Tentative for 4/8/21:
Continue to coincide with discovery hearing April 22 @ 11:00AM.

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

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

Thursday, August 26, 2021

Hearing Room 5B

11:00 AM

CONT... Scott A. Tucker

Chapter 7

Plaintiff(s):

Scott Churilla

Represented By
Stephanie N West

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 26, 2021

Hearing Room 5B

11:00 AM

8:20-10564 Scott A. Tucker

Chapter 7

Adv#: 8:20-01092 Churilla v. Tucker

- #14.00** Motion to Compel Further Responses to Request for Admission, and to Compel Further Production of Documents, as to Defendant, Scott Tucker; Request for Sanctions
(cont'd from 4-22-21)

Docket 10

Tentative Ruling:

Tentative for 8/26/21:
See #13.

Tentative for 4/22/21:
See #12.1.

Tentative for 2/25/21:

The main issue in this motion to compel discovery and for sanctions here is whether Plaintiff has met the procedural requirements under LBR 7026-1, which must be satisfied before filing a motion relating to discovery.

Local Bankruptcy Rule 7026 –1(c)(2) states: “Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and specifying the terms of the discovery order to be sought.” Furthermore, “[i]f the parties are unable to resolve their dispute, then Local Bankruptcy Rule 7026–1(c)(3) requires that the party seeking discovery must submit with the cooperation of the other party a discovery dispute stipulation

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

Thursday, August 26, 2021

Hearing Room 5B

11:00 AM

CONT... Scott A. Tucker

Chapter 7

in one document identifying separately and with particularity each disputed issue that remains to be determined by the court and the contentions and points and authorities of each party. In the absence of this stipulation or a declaration of lack of noncooperation of the other party, the court will not consider the discovery motion.” *In re Marti*, No. 2:16-AP-01270-RK, 2017 WL 2312850, at *1 (Bankr. C.D. Cal. May 26, 2017). Strict adherence to this rule has been required by several courts in this jurisdiction, which have declined to consider discovery motions for failure to satisfy these requirements. See *Id.*; see also *In re Farris-Ellison*, No. 2:11-BK-33861-RK, 2015 WL 3955234, at *2 (Bankr. C.D. Cal. June 26, 2015).

Plaintiff attempts to put all the blame on Defendant’s actions for delays resulting in the inability to complete the meet-and-confer and the stipulation of the parties, but it seems Plaintiff is also at fault here. First, the Court’s Scheduling Order was entered on August 20, 2020, but Plaintiff did not send the discovery requests to Defendant until October 15, 2020. Additionally, due to clerical error and contested service, the discovery requests were not personally served until October 30, 2020.

Subsequently, Plaintiff’s fatal mistake was waiting until December 7, 2020 to correspond with Defendant again, when Plaintiff emailed a Meet and Confer Letter. See Exhibit 1 emails. Under LBR 7026-1(c)(2), this gave Defendant until December 14, 2020 to comply with the meet-and-confer, which is 3 days after the December 11, 2020 deadline set by the Court for filing pre-trial motions in this case. Thus, instead of reacting sooner to Defendant’s inadequate and untimely discovery responses, which would have left enough time to satisfy the procedural requirements of LBR 7026-1(c), Plaintiff unfortunately waited to send the Meet-and-Confer Letter until it was practically impossible to conduct a meet-and-confer and prepare a stipulation by the parties before the pre-trial motion deadline. Moreover, Plaintiff did so even with the knowledge that gamesmanship and delay “is the typical behavior of Defendant.”

Plaintiff seems to believe that the email communications that took place from December 9-10 constitute a meet-and-confer, but this likely fails to meet LBR 7026-1(c) requirements where “counsel for the parties must meet

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

Thursday, August 26, 2021

Hearing Room 5B

11:00 AM

CONT... Scott A. Tucker

Chapter 7

in person or by telephone in a good faith effort to resolve a discovery dispute.” But even if this were considered to constitute a meet-and-confer, there was certainly no attempt to write a stipulation by the parties as required by LBR 7026-1(c)(3). See Exhibit 1 emails.

Therefore, Plaintiff failed to meet the requirements of LBR 7026-1(c), and the court will decline to consider Plaintiff’s motion on the merits at this time. However, it is fairly clear that Defendant has been less than cooperative in producing the requested discovery, and is getting by on a technicality here. That maybe works once. Defendant’s only excuse for untimely discovery production is “severe economic complications for the Defendant (the Defendant/Debtor is the owner/operator of a restaurant/bar in Huntington Beach, and the government mandated lockdowns, and thus he has had to scramble to maintain a skeleton staff at his business . . .” and Defendant does not even address the extreme failure to produce identified documents alleged by Plaintiff. Economic pressures are not a cognizable excuse for failure to provide discovery.

Thus, it is in the interest of justice for the court to consider extending the deadlines for discovery and pre-trial motions, and to continue this motion to allow one more chance to comply with the required procedures under LBR 7026-1. Both sides are admonished not to test the court further as the question of sanctions remains.

Deny at this time pending further hearing in about 60 days. The court will hear argument as to appropriate extensions of the scheduling order.

Party Information

Debtor(s):

Scott A. Tucker

Represented By
Thomas J Polis

Defendant(s):

Scott Tucker

Represented By
Thomas J Polis

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

Thursday, August 26, 2021

Hearing Room 5B

11:00 AM

CONT... Scott A. Tucker

Chapter 7

Plaintiff(s):

Scott Churilla

Represented By
Stephanie N West

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 26, 2021

Hearing Room 5B

11:00 AM

8:20-11517 Boyu Liu

Chapter 7

Adv#: 8:20-01129 FS Hawaii Inc et al v. Liu

#15.00 Motion For:Order Compelling Compliance With Subpoenas To Global Adult Health Care Services, LLC; Salida Del Sol CBAS, LLC; Salida Del Sol Adult Day Health Care, LLC, Li Zhao; Tong Tong; And LRB Accountancy Inc.

Docket 60

***** VACATED *** REASON: CONTINUED TO 10-14-21 AT 11:00 A.M.
PER ORDER ON STIPULATION OF DEBTOR, PLAINTIFF AND THIRD
PARTIES TO CONTINUE HEARING OF MOTION TO COMPEL THIRD
PARTY SUBPOENAS ENTERED 8-11-21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Boyu Liu

Represented By
Richard G Heston

Defendant(s):

Boyu Liu

Represented By
Richard G Heston

Plaintiff(s):

Jeffrey I Golden (TR)

Represented By
David Wood

FS Hawaii Inc

Represented By
Carlos A De La Paz

Trustee(s):

Jeffrey I Golden (TR)

Represented By
David Wood

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

Thursday, August 26, 2021

Hearing Room 5B

11:00 AM

8:19-12052 Deborah Jean Hughes

Chapter 7

Adv#: 8:19-01229 Seligman v. Hughes

#16.00 Motion To Dismiss Adversary Complaint Pursuant To Approved Settlement Agreement

Docket 37

Tentative Ruling:

Tentative for 8/26/21:

Is this action to be dismissed per the compromise approved by order of March 29? Dismiss.

Party Information

Debtor(s):

Deborah Jean Hughes

Represented By
Matthew C Mullhofer
Michael Jones
Sara Tidd

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

Tuesday, August 31, 2021

Hearing Room 5B

10:30 AM

8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

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/1617715759>

ZoomGov meeting number: 161 771 5759

Password: 465325

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

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

Tuesday, August 31, 2021

Hearing Room 5B

10:30 AM
CONT...

Chapter

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: <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, August 31, 2021

Hearing Room 5B

10:30 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, August 31, 2021

Hearing Room 5B

10:30 AM

8:20-10655 Jose Magana

Chapter 13

#1.00 Motion for relief from the automatic stay REAL PROPERTY

**GUILD MORTGAGE COMPANY LLC
Vs.
DEBTOR**

Docket 54

Tentative Ruling:

Tentative for 8/31/21:
Grant. Appearance: optional

Party Information

Debtor(s):

Jose Magana

Represented By
Scott Dicus

Movant(s):

Guild Mortgage Company

Represented By
Nancy L Lee
Jennifer C Wong

Trustee(s):

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 31, 2021

Hearing Room 5B

10:30 AM

8:21-11352 Don Teruo Kojima and Susan Lorraine Kojima

Chapter 11

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 7-27-21) Holding Date**

**CORY MEREDITH
Vs
DEBTORS**

Docket 15

Tentative Ruling:

Tentative for 8/31/21:

The objecting creditors raise questions as to how the debtors are able to make the agreed \$42,000+ per month adequate protection payments. Recent MORs lend some substance for this suspicion. The implication is raised that monies are being shifted around from other obligations, a "shell game" if you will, and consequently this whole Chapter 11 is a house of cards about to collapse. The court would like to hear that counsel has investigated the sources of the monies and has evaluated overall whether a successful conclusion of the reorganization effort is feasible. If things are, in fact, as dire as creditors argue, the court trusts that DIP and counsel are acting reasonably and prudently with estate assets. Explanations are in order. No tentative

Appearance: required

Tentative for 7/27/21:

Further to the last tentative, are Debtors prepared to make adequate protection payments or otherwise protect movant from a deterioration of its position?

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

Tuesday, August 31, 2021

Hearing Room 5B

10:30 AM

CONT... Don Teruo Kojima and Susan Lorraine Kojima

Chapter 11

Tentative for 6/29/21:

As near as the court can determine, there has been no compliance with the requirements of FRBP 4001(a), which requires service upon the twenty largest unsecured creditors absent a committee. So, procedurally, a continuance will be required.

On the substantive issues, the parties are about \$4 million apart on alleged FMV of the subject property. But the court must also consider that the movant is in 4th position on the property behind very large senior liens. Debtor does not offer any periodic payment as adequate protection but appears to rely solely upon their perhaps optimistic view of value. This is dangerous and misplaced. This is particularly so, as is reported here, no service is being made upon the senior liens either, which means with the accrual of interest and costs to the seniors any cushion (assuming that one even exists) is being rapidly eroded. Moreover, implicit in debtors' position (arguing about whether 20%, 10% or maybe even less is "adequate") they would impose all of the risk upon the creditor. This risk may be substantial since it is reported that there was a lengthy attempt to sell prepetition which elicited no offers within the range now being urged. This does not bode well for an extensive delay not supported by any periodic payments. One of the basic precepts of Chapter 11 is the debtor cannot impose (at least not for long) uncompensated risk upon the creditor, and where, as here, the margin for error may be small there is a good possibility the court will find value alone inadequate under these circumstances. Consequently, debtors should use this interim to decide how else protection can be made "adequate" under these circumstances.

Continue to permit compliance with Rule 4001(a).

Party Information

Debtor(s):

Don Teruo Kojima

Represented By
Richard H Golubow

Joint Debtor(s):

Susan Lorraine Kojima

Represented By
Richard H Golubow

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

Tuesday, August 31, 2021

Hearing Room 5B

10:30 AM

CONT... Don Teruo Kojima and Susan Lorraine Kojima

Chapter 11

Movant(s):

Cory Meredith

Represented By
Sarah M St John

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

Tuesday, August 31, 2021

Hearing Room 5B

10:30 AM

8:21-11903 Keith Alan Miles and Jennifer Ann Miles

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 8/31/21:
Grant. Appearance: optional

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